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Editor of the Public Health (London) Act, 1891, and Joint Author of "Ryde and Thomas on Local Government."

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PREFACE.

THE first edition of this volume was published in 1855, and like the four following editions had the benefit of the knowledge and experience of the author, the late Mr. T. Baker.

Since the fifth edition appeared sixteen years have elapsed, and the author having died, I have been requested to prepare the present edition. During the above interval many statutes have been passed affecting not only the law of burial, but also the appointment and constitution of the local authorities entrusted with the administration of such law. While, as in former editions, the Burial Acts, 1855 to 1885, remain the principal statutes affecting the subject, it has been necessary to refer in this edition to the whole or portions of nearly one hundred and seventy statutes.

So considerable have been the alterations effected in the law by the Local Government Act, 1894, by the various Public Health Acts affecting London and the rest of the country, and by such statutes as the Open Spaces and Disused Burial Grounds Acts, that it has been found necessary to recast the work and in many parts to rewrite it entirely.

The plan adopted in the present (the sixth) edition is to give a general and sufficiently comprehensive view of the whole subject in the form of an Introduction,

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which is followed by the whole of the Burial Acts and other Acts affecting the subject of burial in extenso, with notes setting out, under the various sections of the Acts, the whole of the decisions upon the subject to the end of December, 1897.

In citing cases, the date of the decision is given in all cases decided within the last fifty years, and, as far as possible, the references are given to a case in all the reports. The Table of Cases gives these references in alphabetical order. I feel that in changing the plan of the book, it will meet the convenience of the profession, public authorities, and others needing to refer to the subject, but I cannot but fear that in so large an alteration some few slips and errors may have crept in, for which indulgence is asked.

The whole of the Home Office and Local Government Board regulations in force at the present time, together with the Forms which in the past have been found useful, are given in the Appendix.

The Index, which will be found extensive and well arranged, has been prepared by my friend and former pupil, Mr. H. M. Giveen, Barrister-at-law, to whom for this and much other valuable assistance in the preparation of the book my gratitude and thanks are due.

E. LEWIS THOMAS.

4, ELM COURT, TEMPLE,
April, 1898.

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THE

LAW RELATING TO BURIAL.

INTRODUCTION.

CHURCHYARDS.

THE custom of interments within towns is comparatively modern, yet the custom having become established, it became the practice when a church was built to reserve a piece of ground adjacent to it for the interment of the dead. The interment of the dead beneath and around churches has been called a "distinctive feature of Christian burial," but the persons who make this assertion forget that burial in the time of Christ was extramural. The widow of Nain was following her son out of the city. Lazarus was interred in a cave beyond Bethany. We owe the introduction of "church burial" to the superstitious observances of the dark ages.

According to Gibson (p. 453), "anciently, burying, not only in temples, and churches, but even in cities, was expresly prohibited." Such was the law of the Twelve Tables, and that of the Christian Emperors. The same practice is said to have continued in the Christian Church till the time of Gregory the Great, and in England till the time of Cuthbert, Archbishop of Canterbury. The former gave the following reason "why it was more

profitable to be buried within the precincts of a church than at a distance, viz., that the relatives of the dead, so often as they came to those sacred places, may remember the dead whose graves they behold, and offer prayers for them unto God, which reason was afterwards transferred into the body of the Canon law; and this superstition of praying for the dead seems to have been the true original of churchyards as encompassing or adjoining the church, which being laid out and enclosed for the common burial places of the respective parishes, every parishioner hath, and always had, a right to be buried in them."

In *Gilbert* v. *Buzzard*, [1820] 3 Phil. 349; 2 Hag. Con. 343, Lord Stowell says: "In our own country the practice of burying in churches is said to be anterior to that of burying in what are now called churchyards, but was reserved for persons of pre-eminent sanctity of life."

By the common law the churchyard is the common burial place for all persons dying within the parish and not being within certain exclusions of the ecclesiastical law. Every person is entitled to be buried therein without charge for breaking the soil (Degge, pt. 1, c. 12; *R.* v. *Coleridge*, [1819] 2 B. & Ald. 806), and by Canon 68 of 1603, no minister shall refuse or delay to bury any corpse, convenient warning being given him thereof (*R.* v. *Stewart*, [1840] 4 P. & D. 349; 12 Ad. & E. 773). As to what constitutes a convenient warning see *Titchmarsh* v. *Chapman*, [1844] 1 Rob. Ecc. 175; 3 N. C. 370; 8 Jur. 1077, and *Ex parte Titchmarsh*, [1845] 9 Jur. 159. He is indictable if his refusal to bury after such warning creates a nuisance (*R.* v. *Taylor*, cited in *Andrews* v. *Cawthorne*, [1745] Willes, p. 538, note *n*), and he must read the whole service (*Re Todd*, [1844] 3 N. C. suppl. p. li.). The rubric

confirmed by 13 & 14 Car. II. c. 4, forbids the use of the customary office on unbaptized persons, but a clergyman cannot refuse to bury the child of a dissenter if baptized (*Kemp* v. *Wickes*, [1809] 3 Phil. 264; *Nurse* v. *Hensloe*, [1844] 3 N. C. 272), nor the body of a person baptized with water by a layman in the name of the Holy Trinity (*Martin* v. *Escott*, [1841] 2 Curt. 692: on appeal, 6 Jur. 765), though it is in his discretion whether or not the body shall be carried into the church (1 Burn's Ecc. L. 267). In the case last cited a clergyman having due notice of a death and refusing to perform the office was suspended for three months.

Persons *felo de se* are excluded from burial in consecrated ground with the rites and by a clergyman of the Church of England, and as to the propriety of the verdict of the coroner's jury the minister cannot inquire (*Cooper* v. *Dodd*, [1850] 2 Rob. Ecc. 270), but the coroner shall direct such remains to be interred in the churchyard or other burial ground of the parish, and the interment may be made in any of the ways authorised by the Burial Laws Amendment Act, 1880 (43 & 44 Vict. c. 41, *post*). See 45 & 46 Vict. c. 19, *post*, and notes thereon.

By Canon 68 the bodies of persons "denounced excommunicated majori excommunicatione for some grievous and notorious crime," of whose repentance no man can testify, are not to be buried with the rites of the Church. If evidence of such repentance has been forthcoming, the bishop has sometimes issued commissions both to bury such bodies and also to absolve them for that purpose (Gibs. p. 450). There were formerly other exclusions, but at present the unbaptized, persons *felo de se*, as above explained, and the excommunicated are alone debarred from Christian burial.

The burial of executed felons is now provided for by

24 & 25 Vict. c. 100, s. 3, and 31 Vict. s. 6. The former Act directs that the body of every person executed for murder shall be buried within the precincts of the prison in which he shall have been last confined after conviction, and the sentence of the Court shall so direct: the latter, that the body of every offender executed shall be buried within the walls of the prison within which judgment of death is executed on him; but a secretary of state, if satisfied that there is not convenient space within the walls for burial, may in writing appoint some other fit place for the purpose.

A clergyman cannot be compelled to bury the corpse of any person in a particular vault or part of the churchyard, but has a discretion on the subject (*Ex parte Blackmore*, [1830] 1 B. & Ad. 122). Again, a claim to burial in an unusual manner cannot be enforced, *e.g.* in iron coffins (*R.* v. *Coleridge*, [1819] 2 B. & Ald. 806). If such receptacles are received, an increased rate may be charged for longer occupation of the ground (*Gilbert* v. *Buzzard*, [1820] 3 Phil. 335; 2 Hag. Con. 343). A custom that every parishioner has a right to bury his dead relations as near his ancestors as possible in a particular part of the churchyard cannot be maintained (*Fryer* v. *Johnson*, [1755] 2 Wils. 28). The accustomed fees for burial are payable, although if denied the clergyman must still perform the office of burial (*Gilbert* v. *Buzzard*, *supra*).

The burial of persons dying out of the parish must have the concurrence of the churchwardens and the incumbents, except in the case of travellers having a family burying place (*Att.-Gen.* v. *Strong*, [1868] 1 Seton's Judgments, 5th ed. p. 485). The churchyard of a parish is primarily for the parishioners, and, therefore, churchwardens will be admonished for allowing strangers

to be buried in their churchyard, if such burials be to the detriment of parishioners (*The Case of the Harrow Churchwardens*, 1 Burn's Ecc. L. 258). See also *Littlewood* v. *Williams*, [1815] 6 Taunt. 277. No person, unless he be duly authorised, can be permitted to perform the services of the Church of England in consecrated ground (*Johnson* v. *Friend*, [1860] 6 Jur. N. S. 280; *Wood* v. *Burial Board of Headingley-cum-Burley*, [1892] 1 Q. B. 713). There is no objection to the reading of the burial service on unconsecrated ground, but a clergyman could not be compelled to officiate if the ground be not consecrated (*Kingsmill* v. *Rugg*, [1868] 18 L. T. N. S. 94; L. R. 2 P. C. 59; 1 A. & E. 343; 39 L. J. Ecc. 13). See also 43 & 44 Vict. c. 41, ss. 12 and 13, *post*.

Burial in a decent and orderly manner may take place without a religious service (43 & 44 Vict. c. 41, ss. 6, 7, and 8, *post*).

Apart from statutory enactment as to closing places of burial, the consent of the incumbent, and his alone, is necessary to burial in any part of his church (*Frances* v. *Ley*, Cro. Jac. 367; Gibs. 453; Wats. c. 39–398). By Canon law only the bodies of priests or other holy persons are to be buried in churches, and the incumbent is regarded as the only judge of the merits of such persons. But the incumbent can only grant or refuse his license in individual cases. He cannot grant the separate use in perpetuity of any vault either in the church or the churchyard without a faculty (*Bryan* v. *Whistler*, [1828] 8 B. & C. 288), nor can he refuse burial in a vault for which a faculty has been granted. A right of burial in perpetuity can only be acquired by faculty or by prescription. Such faculty will be granted even against the will of an incumbent, though the

objections of the latter will always be regarded as important (*Rugg* v. *Kingsmill, supra*). It will not confer a freehold on the grantee, except where a vault is in a private chapel or aisle, the fee of which is in the owner of the chapel or aisle. The freehold of the ground is never in the chancellor, and it cannot pass to the grantee of the faculty. If the ground be required for the use of other parishioners, the rights of the grantee are subordinate to their rights, and another faculty will be granted for the removal of the vault. But the owner will be entitled to have it removed to another site in the churchyard at the cost of the applicant for a new faculty (*Vicar of St. Botolph* v. *Parishioners*, [1892] P. 161). At common law there is one exception to the necessity of the incumbent's consent. The right of burial within the church may be prescribed for as appendant to a manor house, and an action at law lies for interference with such right (Gibs. p. 453; *Waring* v. *Griffiths*, [1758] 1 Burr. 440; 2 Ld. Ken. 183; *Harvey's Case*, cited in *Dawney* v. *Dee*, Cro. Jac. 606).

It requires exceptional circumstances to obtain a faculty for the construction of a vault or grave within or under a church, and statutory enactments have further circumscribed the cases where such faculty can be obtained. By the Public Health Acts, 1848 and 1875, no vault or grave may be constructed under or within any place of worship built after August 31st, 1848. The Burial Act, 1852, forbade burial in any church in the metropolis after an order in council for discontinuance, excepting in St. Paul's Cathedral and Westminster Abbey, and the Burial Act, 1853, extended this provision to any church wherever situated.

It should further be noticed that the jurisdiction of the Ecclesiastical Courts is confined to consecrated

churches (*Turner* v. *Rector of Hanwell*, [1842] 1 N. C. 368).

A right of burial may be claimed by prescription either as belonging to a manor or under the presumption of a faculty, and refusal to allow a just claim is an ecclesiastical offence. In the case of *Nevill* v. *Baker* (*Arches Court*, not reported), a clergyman was suspended for three months for refusing burial in a family vault. *Per curiam*, the consent of the incumbent to the faculty, when the vault was constructed, will bind his successor; nor is it necessary to prove the constant use of a vault existing from time immemorial. The head of the family has, moreover, a right to admit any member of the family who, though non-resident, is a parishioner; but no blame would attach for refusing to bury in a place proved to be dangerous to health—it would be a duty to do so. The incumbent may make a bargain for opening a vault in his church for the burial of a non-parishioner, which may be enforced at common law (*Nevill* v. *Bridger*, [1874] L. R. 9 Ex. 214; 43 L. J. Ex. 147; 30 L. T. N. S. 690; 22 W. R. 740). Any nuisance in the churchyard is properly of ecclesiastical cognizance (*Quilter* v. *Newton*, Carth. 151). Any clerk brawling in a churchyard may be suspended for such time as the ordinary may think fit; and any clerk committing an assault therein is deemed, *ipso facto*, excommunicate (5 & 6 Ed. VI. c. 4).

By 27 Geo. III. c. 44, s. 2, no suit for brawling can be commenced in an Ecclesiastical Court after eight months from the time of committing the offence, and the power of the Ecclesiastical Courts over persons not in holy orders is abolished in suits for brawling or defamation (23 & 24 Vict. c. 32, s. 1). By s. 2 of the last-mentioned Act, persons guilty of riotous, violent,

or indecent behaviour in a churchyard or burial ground, or who molest, let, disturb, vex, or trouble any minister celebrating any divine service, rite, or office in a churchyard or burial ground, may on summary conviction be fined five pounds or imprisoned for two months.

By the common law the parishioners are bound to repair the fence of the churchyard at their own charge (Lind. 253; 2 Inst. 489). By prescription the vicar may be liable to repair the fence, and an indictment will lie for a misdemeanour if any damage be occasioned by neglect (*R.* v. *Reynell*, [1805] 6 East 315). If the owners of adjoining lands have been used to repair, such is a good custom, and proceedings may be had at common law for neglect. By Canon 85, the churchwardens are to see to the repair, &c. of the churchyard in manner as accustomed, at the charge of the proper parties (see also 2 Inst. 489, and Lind. 253). The churchwardens, however, cannot alter or vary the paths in the churchyard without the consent of the incumbent, although the alteration is with the consent of the parishioners (*Walter* v. *Mountague*, [1836] 1 Cur. 253). Subject to the right of the parishioners to burial in the churchyard (*Maidman* v. *Malpas*, [1794] 1 Hag. Con. 208; 3 Burn's Ecc. L. 247), the freehold of it is in the incumbent, who may bring his action for any trespass in the churchyard (2 Bro. Abr. Trespass 210), so also may the incumbent's lessee (2 Roll. Abr. 337).

And it was enacted by 35 Ed. I. st. ii., which was declaratory of the common law, that "trees growing in the churchyard are to be reckoned amongst the goods of the church, the which laymen have no authority to dispose. But seeing that trees are often planted to defend the force of the wind from hurting the church, the parson is prohibited from felling them

unadvisedly, unless the chancel of the church want repair; or if the body of the church doth need repair, then the parson in charity would do well to relieve the parishioners with bestowing on them the same trees."

Whether the herbage and trees of a churchyard belong to the rector or vicar of the parish, in a parish where there are both, is doubtful (see Lind. 267; 2 Roll. Abr. 337; *Cox* v. *Ricraft*, [1757] 2 Lee 373; *Greenslade* v. *Darby*, [1868] L. R. 3 Q. B. 421; 9 B. & S. 428; 37 L. J. Q. B. 137; 18 L. T. N. S. 463; 16 W. R. 898). A parson committing waste by felling the trees may be restrained by prohibition at the instance of the patron (*Liford's Case*, 11 Co. 49 (*b*),) or he may be indicted under 35 Ed. I. st. ii. (*Cox* v. *Ricraft*, *supra*); so also if he attempt to remove the earth, &c. from the churchyard for his private use (*Bennett* v. *Bonaker*, [1828] 2 Hag. Ecc. 25; [1830] 3 Hag. Ecc. p. 50).

Any person guilty of violent or indecent behaviour in a churchyard, or who shall disturb any clergyman celebrating divine service therein, is liable to a penalty of five pounds or to two months' imprisonment (23 & 24 Vict. c. 32, s. 2), and any person causing damage to any monument or fence is liable to imprisonment not exceeding six months, with or without hard labour (24 & 25 Vict. c. 97, s. 39).

Although the freehold of the churchyard is in the parson, even he has no right to remove the tombstones, the property of which is in the persons who erected them (*Spooner* v. *Brewster*, [1825] 3 Bing. 136; *Bryan* v. *Whistler*, [1828] 8 B. & C. 288), and trespass will lie at the instance of the erector of a tombstone against a person who wrongfully removes it. Even if the burial fee be not paid, the tombstone must not be removed (*Sims* v. *London Necropolis Co.*, [1885] 1 T. L. R. 584).

Monuments or buildings of height cannot be legally erected without a faculty from the ordinary (*Seagar* v. *Bowle*, [1823] 1 Add. 541; *Bardin* v. *Calcott*, [1789] 1 Hag. Con. 14).

An incumbent cannot disallow the erection of a tombstone on the ground that the title of a person named in the inscription (otherwise unobjectionable) is incorrect (*Keet* v. *Smith*, [1876] 1 P. D. 73; L. R. 4 A. & E. 398; 45 L. J. P. C. 10; 33 L. T. N. S. 794; 24 W. R. 375).

A bequest to churchwardens for keeping certain tombs in repair is void (*Rickard* v. *Robson*, [1862] 8 Jur. N. S. 665; 31 B. 244), so also is one to keep up a vault or a tomb (*In re Vaughan*, [1886] 33 Ch. D. 187; 55 L. T. N. S. 547).

The Ecclesiastical Court cannot allow any portion of consecrated ground to be converted to secular uses, nor grant a faculty to confirm such appropriation (*Harper* v. *Forbes*, [1859] 5 Jur. N. S. 275; *Rector of Walbrook* v. *Parishioners*, [1852] 2 Rob. Ecc. 515; *Walter* v. *Mountague*, [1836] 1 Curt. 253), and the Court will compel the restoration of any portion of such ground which has been improperly removed (*Jarrett* v. *Steel*, [1820] 3 Phill. 167; *Knapp* v. *Parishioners of Willesden*, [1851] 2 Rob. Ecc. 358; *Campbell* v. *Parishioners of Paddington*, [1852] 2 Rob. Ecc. 558; *Adlam* v. *Colthurst*, [1867] L. R. 2 Ad. & Eccl. 30); but the Court will grant a faculty for the erection of schools in a churchyard in certain cases, especially if the ground be closed under the Burial Acts (*Russell* v. *Parish of St. Botolph*, [1859] 5 Jur. N. S. 300); but see *Rector of St. George, Hanover Square* v. *Stewart*, 2 Str. 1126.

In the case of a churchyard closed for burial by an order in council, a faculty was granted to erect on a part

thereof a mortuary, together with rooms for holding inquests and making *post mortem* examinations, and for the residence of the mortuary keeper (*Hansard* v. *St. Matthew, Bethnal Green*, [1878] 4 P. D. 46; *Burial Board of St. George's, Hanover Square* v. *Hall*, [1879] 5 P. D. 42). So also a faculty has been granted to devote a portion of a closed churchyard to widening a public thoroughfare (*Vicar of St. Botolph* v. *Parishioners*, [1892] P. 161), and in another case to allow an electric lighting company to construct underground chambers for commercial purposes in a churchyard (*In re St. Nicholas Cole Abbey*, [1893] P. 58). Recently, however, the chancellor of another diocese has held that these decisions are not warranted by authority, and refused to follow them (*In re Plumstead Burial Ground*, [1895] P. 225). *Vide infra*, p. 42.

The Disused Burials Ground Act, 1884 (47 & 48 Vict. c. 72), s. 3, forbids the erection of any buildings upon any disused burial grounds except for the purpose of enlarging a place of worship; but the Act excepts lands disposed of under the authority of an Act of Parliament (*Att.-Gen.* v. *Trustees of the London Parochial Charities*, [1896] 1 Ch. 541).

By the Metropolitan Open Spaces Act, 1881, ss. 4 and 5, and the Open Spaces Act, 1887, the owner of any closed or disused burial ground (*In re Ponsford and Newport District School Board*, [1894] 1 Ch. 454) may, for the purpose of making the same an open space for the public, convey it or any limited interest therein, (*a*) in the metropolis to the Metropolitan Board of Works or to the vestry or board of the parish or district where the burial ground is situated, subject in the case of a board or vestry to obtaining the bishop's license or faculty; (*b*) elsewhere to urban sanitary authorities or

to rural sanitary authorities empowered by the Local Government Board. The conveyance may be with or without consideration, or a lease for years at a rent. The authority to whom the conveyance is made is given powers to maintain the burial ground and adapt it for the enjoyment of it as an open space. Games may be played in consecrated ground if allowed by the Bishop, or in unconsecrated ground if allowed by the grantor (50 & 51 Vict. c. 32, s. 2). Provision is also made for the removal of tombstones (s. 3).

Where a churchyard which had been closed by order in council was afterwards taken by the Corporation of Liverpool under an Improvement Act, and a sum of money paid into court, it was held that the rector was entitled, as freeholder, to have such sum invested and to receive the dividends, to the exclusion of the churchwardens, vestry, parish clerk, and sexton (*Ex parte Rector of Liverpool*, [1870] L. R. 11 Eq. 15; 40 L. J. Ch. 65; 23 L. T. N. S. 354); see similar judgment of Wood, V.C., in the case of *St. Pancras Burial Ground*, where the closed burial ground was taken by a railway company under the Lands Clauses Act, cited by Malins, V.C., in *Ex parte Rector of Liverpool*. Consecrated burial grounds cannot be used for other purposes, nor can the owners remove the bodies interred therein without an Act of Parliament (*R.* v. *Twiss*, [1869] L. R. 4 Q. B. 407; 10 B. & S. 298; 38 L. J. Q. B. 228; 20 L. T. N. S. 522; 17 W. R. 765).

By 59 Geo. III. c. 134, s. 39, the Church Building Commissioners may, as they shall think fit, but with the consent of two justices and on notice given according to 55 Geo. III. c. 68, alter, repair, pull down and rebuild the walls or fences of any existing burial ground of any parish or chapelry; and may stop up

and discontinue, alter or vary any entrance or gate leading into any churchyard or burial ground, and the paths, footways, and passages into, through, or over the same as to them may appear useless.

By 56 Geo. III. c. 141, it is lawful for any spiritual or ecclesiastical body corporate or spiritual person, being a corporation sole, possessing land adjacent to a cemetery, churchyard, or burying ground, to sell by deed enrolled in the Chancery Division within six months, for the purpose of consecration, such part not exceeding one acre as may be necessary for enlarging the cemetery, churchyard, or burial ground (s. 1). In the case of a corporation sole the consent of the bishop, or of the ordinary, and of the patron of the living is required, and a prior valuation of the land by a competent valuer appointed by the ordinary, who shall verify the value before a justice of the peace (s. 2). No alienation can be questioned after twenty years for want of compliance with the forms prescribed by the Act (s. 3). All ground which has been consecrated as burial ground shall, after twenty years from consecration, be discharged from all adverse titles, claims, and demands whatsoever (s. 4).

By the Church Building Act, 1818 (58 Geo. III. c. 45), s. 33, the Commissioners under that Act may accept sites for churches and churchyards, and such land shall thereafter for ever be devoted to ecclesiastical purposes only. By s. 36 persons having but a limited interest in the lands are empowered to convey to the Commissioners, and under s. 40 there is power, in case of dispute as to the amount of satisfaction, to empannel a jury to assess the sum to be paid.

By the Church Building Act, 1819 (59 Geo. III. c. 134), the Commissioners are empowered to grant

money for providing or enlarging cemeteries (s. 22), and churchwardens may levy rates for these purposes (s. 23). All parishes and extra-parochial places may be required by the Commissioners to furnish lands for enlarging existing churchyards or burial grounds, and for making additional churchyards or burial grounds (s. 36). The powers of s. 36 of 58 Geo. III. c. 45, are extended to the purchase of lands for burial grounds, or for extending burial grounds to cases where land for a church is not required (s. 37). All land acquired as an extension of an existing burial ground, or as a new burial ground, is to be consecrated for the burial of the dead according to the usage of the Church of England, and shall for ever be used as burial ground, and shall vest in the person or persons in whom the freehold of the ancient churchyard or burial ground is vested.

Under the Church Building Act, 1822 (3 Geo. IV. c. 72), public departments and all corporations may grant sites for churchyards or cemeteries, or for enlarging them, without valuable consideration (s. 1). The Commissioners may authorise and empower any parish to procure land sufficient, and properly situated, for a church or chapel yard or burial ground, or as an addition to an existing church or chapel yard or cemetery (whether the acquired land is within the parish for whose use it is intended or not, and if not in such parish it shall be deemed part of the parish), and authorise the raising of the money for the purpose (s. 26). The power to raise a rate under the last cited Acts has been questioned, however (see *R.* v. *Abney*, [1854] or *Whitwick Churchwardens* v. *Stinson*, 23 L. J. M. C. 154; 18 J. P. 711).

By s. 14 of the Church Building Act, 1845 (8 & 9

Vict. c. 90), as amended by 9 & 10 Vict. c. 68, s. 1, where land out of a parish has been obtained for a new or additional burial ground for any parish under 59 Geo. III. c. 134, s. 22, the Commissioners may declare that the land so acquired shall be part of such parish.

Under 30 & 31 Vict. c. 133, an addition to an existing churchyard may be consecrated by the bishop without the presence of his chancellor, and may be consecrated without any fee beyond five shillings for deposit of the consecration deed (ss. 1, 2, 3). Persons under disability may convey land for such additions (s. 4) in accordance with the form prescribed in s. 5 of the Act, free of stamp duty, so as to vest the land as the old churchyard is vested. Exclusive right of burial in a portion of such addition may be secured to the grantor by s. 9, provided such portion does not exceed one sixth part of the whole of the said land (31 & 32 Vict. c. 47). Such reserved portions can not be closed under the Burial Acts unless by special order (s. 11).

By the Places of Worship Sites Act (36 & 37 Vict. c. 50) any person seised or entitled in fee simple, fee tail, or for life or lives of or to any manor or lands of freehold tenure, and having the beneficial interest therein and being in possession for the time being, may grant, convey, or enfranchise by way of gift, sale, or exchange in fee simple or for any term of years any quantity not exceeding an acre of such land for a burial place: but a tenant for life must before doing so obtain the concurrence of the next beneficial remainderman in fee as party to the conveyance, either personally, or, if under disability, by persons prescribed by the Act (s. 1). The Act contains further provisions as to conveyances by equitable owners and persons under disability (s. 3); and by an amending Act (45 & 46 Vict. c. 21) the

provisions of the Act are extended to corporations and cases where the remainderman is unborn or unascertained.

Under the provisions of 30 & 31 Vict. c. 135, by which the two Archbishops, their vicars-general, and the Lord Chancellor, with the consent of the Lords of the Treasury, were empowered to settle a table of fees, a table of fees to be paid on the consecration of churchyards and granting of faculties has been drawn up, and was published in the *London Gazette* of March 19th, 1869.

The powers under the above Acts are practically superseded by the powers given by the group of Acts called the Burial Acts, 1852 to 1885, hereafter dealt with.

The provisions of the Trustees Appointment Act, 1850 (13 & 14 Vict. c. 28), for rendering effectual titles of societies to places of worship, are by the Trustees Appointment Act, 1869 (32 & 33 Vict. c. 26), extended to burial grounds acquired by similar societies, but such extension is not to interfere with the Burial Acts, and by the Trustees Appointment Act, 1890 (53 & 54 Vict. c. 19), the Act of 1850 is to apply to and include land acquired and held in trust as a burial ground by trustees in connection with any society or body of persons comprising several congregations, or sections, or divisions, or component parts associated for a religious purpose.

The Public Worship Regulation Act, 1874 (37 & 38 Vict. c. 85), contains provisions for dealing with the irregular or illegal performance of the burial service. The archdeacon of the archdeaconry, or a churchwarden or any three parishioners of the parish within which archdeaconry or parish a burial ground is situate, or for the use of any part of which any burial ground is legally provided, may make a representation to the

bishop that the incumbent has within the preceding twelve months used or permitted to be used in such burial ground some unlawful ornament of the minister of the church, or neglected to use some prescribed ornament or vesture, or that he has within the preceding twelve months failed to observe or to cause to be observed the directions contained in the Book of Common Prayer relating to the performance in such burial ground of the services, rites, and ceremonies ordered by the said book, or has made or permitted to be made some unlawful addition to, alteration of, or omission from such services, rites, and ceremonies. The incumbent for the purposes of the Act means the person in holy orders legally responsible for the due performance of divine service in any church, or of the Order for the Burial of the Dead in any burial ground. The bishop may either decide that no proceedings shall be taken on the representation, or may, with the consent of the parties, hear the case himself, in which case there is no appeal from his decision. If the parties do not consent that the bishop should hear the case, it will be tried by the judge appointed as prescribed by the Act, and an appeal lies from him to the Privy Council. In the case of a cathedral or collegiate church, the duties of the bishop are to be performed by the visitor.

CEMETERIES.

Proprietary cemeteries may be provided by private owners or by companies under a special Act of Parliament which shall declare that the Cemeteries Clauses Act, 1847 (10 & 11 Vict. c. 65), is incorporated therewith; all the clauses of the said Act, except in so far as varied or excepted by the special Act, shall apply to the cemetery authorised by the special Act.

Local authorities (outside the County of London) may, under the Public Health (Interments) Act, 1879 (42 & 43 Vict. c. 31), acquire, construct, and maintain a cemetery either wholly or partly within or without their district, and may accept a donation of land, money, or other property for these purposes. If the local authority adopt the provisions of this Act, the cemetery provided by them will be subject to the Cemetery Clauses Act, 1847 (10 & 11 Vict. c. 65), and not to the provisions of the Burial Acts.

TOMBSTONES AND MONUMENTS.

The building or erecting of tombs, sepulchres, or monuments for the dead in church, chancel, chapel, or churchyard in a convenient manner, has been said by Lord Coke (3 Inst. 102) to be lawful, being the last work of charity that can be done for the deceased. But as the fabric of the church is in the care of the ordinary, it is essential that his consent should be obtained for the erection of a monument in the church, as he is the sole and proper judge of what may be erected in the interior of the church (2 Cro. Eliz. 366; *Maidman* v. *Malpas*, [1794] 1 Hag. Con. 205). Therefore strictly no monument can be legally erected without a faculty for the purpose (*Seagar* v. *Bowle*, [1823] 1 Add. 541), but in practice the consent of the incumbent is considered sufficient for putting up monuments of a usual kind, subject to the right of the ordinary to order their removal (*Hopper* v. *Davis*, [1754] 1 Lee 640), or to bring a suit for that purpose (*Palmer* v. *Episcopum Exon.*, Stra. p. 576). The permission of the latter should be obtained for the erection of unusual monuments such as buildings of height (*Bardin* v. *Calcott*, [1789] 1 Hag.

Con. 14). A custom for the churchwardens to set up monuments without the consent of the incumbent or ordinary has been adjudged bad (*Beckwith* v. *Harding*, [1818] 1 B. & Ald. 508). An appeal lies to the ordinary from the incumbent's refusal of his consent (*Bulwer* v. *Hase*, [1803] 3 East 217), and from the ordinary to the higher courts (*Cart* v. *Marsh*, 2 Stra. 1080). It would seem that if a faculty be obtained the consent of the incumbent is unnecessary, as he would be compensated by payment of the imposed fee (see *Breeks* v. *Woolfrey*, [1838] 1 Curt. 880). In the case of *Keet* v. *Smith*, [1876] L. R. 4 A. & E. 398; 1 P. D. 73; 33 L. T. N. S. 794; 45 L. J. P. C. 10; 24 W. R. 375, the daughter of a Wesleyan minister was buried in the churchyard of the parish church in which her father resided. The incumbent refused to allow to be erected over the grave a stone with an inscription which described the deceased as the daughter of the "Rev. H. K., Wesleyan minister." The Privy Council overruled the decision of Sir Robert Phillimore in the Court of Arches, and granted a faculty on the ground that the presence of the words "the Rev." before "H. K., Wesleyan minister," was not a sufficient ground for the incumbent refusing to allow the erection of the tombstone. As to the form of a faculty for a vault in the church, and the circumstances under which it will be granted, see *Magnay* v. *The Rector of St. Michael*, [1827] 1 Hag. Eccl. 48.

If an objectionable tombstone is put up, the proper person to proceed against is the erector (*Breeks* v. *Woolfrey*, [1838] 1 Curt. 880); possibly the ordinary could cause in such a case the stone to be removed without liability to action, and with the authority of the ordinary probably the incumbent could, as his agent,

do so also (Cripps, Ecc. L. p. 440); but not without such authority (*Maidman* v. *Malpas*, [1794] 1 Hag. Con. p. 212; *Ritchings* v. *Cordingley*, [1868] L. R. 3 Ecc. 113; 19 L. T. 26).

A lay rector is not entitled to erect a monument in the chancel without the ordinary's leave. Before applying for a faculty he should obtain the incumbent's consent, but the refusal of such consent is not equivalent to an absolute veto, though the incumbent may show cause against the grant of a faculty (*Rich* v. *Bushnell*, [1827] 4 Hag. Eccl. 164).

The erector of the tombstone, whether in the churchyard or in the church, has the possession of and property in the tombstone, and can maintain his action against any one injuring it (*Spooner* v. *Brewster*, [1825] 3 Bing. 136). He has a right to repair it and keep it in proper order, without obtaining a fresh consent from the ordinary or incumbent. The rights of the original erector descend to his heir.

Apparently the churchwardens, as responsible for preserving the churchyard (*Marriott* v. *Tarpley*, [1838] 9 Sim. 279), can bring an action at law against a person injuring tombstones or monuments; and such an act also renders the offender liable to punishment by ecclesiastical law, and, according to Lord Coke, also by common law (3 Inst. 202). But see the judgment of Kay, J., in *Batten* v. *Gedye*, [1889] 41 Ch. D. at p. 517.

A bequest of money on trust to apply the income in repairing a churchyard is a charitable legacy, and is valid under 43 Geo. III. c. 108, s. 1, but a trust to keep a vault or tomb in repair is void (*Re Vaughan*, [1886] 33 Ch. D. 187; 55 L. T. N. S. 547). Where money was bequeathed to the trustees of a charity, and the keys of a family vault committed to their care, on condition the vault

should be kept in good repair and rebuilt when necessary, with a proviso that on failure to perform the condition the fund should go over to another charity, it was held that the condition was valid, and also that the gift over was not contrary to the law against perpetuities (*In re Tyler*, [1891] 3 Ch. 252; *In re Bowen*, [1893] 2 Ch. 491).

As to the fees for erecting monuments, it was held in *Rugg* v. *Kingsmill*, [1868] L. R. 2 P. C. 59; 39 L. J. Ecc. 13; 18 L. T. N. S. 94, that the vicar or perpetual curate, although entitled to officiate in and have free access to the chancel, has no right, strictly speaking, to fees for the erection of monumental tablets, or for the construction of vaults in the chancel in the very rare instances in which they should be allowed; but he has certainly a *persona standi* by reason of his general spiritual position as incumbent, to oppose the grant of a faculty for the purpose of allowing their erection.

FEES.

The parson cannot refuse to allow the burial of a body otherwise entitled to burial, on account of non-payment of any fee. No Canon has ever fixed any fee for interment or for the office of burial; the Constitution of Langton enjoined that burial should not be denied to any one upon the account of any sum of money. Burial fees may, however, be payable by custom, but for the interment and not for the performance of the burial service, and the custom of each particular parish would seem to determine not only the payment of the fee, but the appropriation of it when paid. Such customary fees are recoverable only in spiritual courts (*Spry* v. *Gallop*, [1847] 16 M. & W. 716); but the temporal courts have sole cognizance of the questions of

the existence and reasonableness of the custom, and will grant a prohibition if these questions are raised in a suit for the recovery of fees (*Andrews* v. *Symson*, 3 Keb. 523; and *Fruin* v. *Dean and Chapter of York*, 2 Keb. 778; *Dean of Exeter's Case*, 1 Salk. 334). A fee is not due where no service is done, and therefore cannot be taken if a person who dies in a parish is buried elsewhere (*Patten* v. *Castlemain*, [1753] 1 Lee 387). In some places the fee is payable to the incumbent, in others to the churchwardens, in others again to the churchwardens and the incumbent in recognised proportions. In certain places the fees are payable to the churchwardens even when the interment is within the church, unless it be within the chancel (*Anon.* 2 Shower 184). See *Littlewood* v. *Williams*, [1815] 6 Taunt. 277; *Andrews* v. *Cawthorne*, [1745] Willes 536; *Anderson* v. *Walker*, 3 Salk. 86; *Bardin* v. *Calcott*, [1789] 1 Hag. Con. 14; *Bryant* v. *Foot*, [1868] L. R. 3 Q. B. 497; 18 L. T. N. S. 578; 37 L. J. Q. B. 217; 9 B. & S. 444.

It is doubtful who is liable for these fees, whether the personal representative of the deceased or any one else (*Spry* v. *Guardians of Marylebone*, [1839] 2 Curt. 11).

In the case of burials of paupers, 7 & 8 Vict. c. 101, s. 31, and 28 & 29 Vict. c. 79, s. 1, provide that the fees payable by custom of the place where the burial takes place, or under any Act of Parliament, shall, in the case of burials by order of the guardians or overseers, be paid out of the common fund of the union to the person or persons entitled by custom or the Act of Parliament to receive such fees.

In *Spry* v. *Gallop*, [1847] 16 M. & W. p. 730; 1 Ch. and Cl. Cases 28, it was laid down that a fee for burial is not commonly due as of right, but only by custom in any particular parish, or under provisions of some

local Act of Parliament. If the custom is established, the remedy against a person refusing to pay the fee is in the Ecclesiastical Court; but if the custom is disputed, the Ecclesiastical Court could not try the question of the existence of the custom. According to Gibson (p. 452), a fee for burial belongs to the minister of the parish in which the deceased heard divine service and received sacraments, wheresoever the corpse be buried; but this cannot be the law (see Cripps, p. 664). A custom to take a burial fee in respect of all persons dying in the parish is illegal (*Topsall* v. *Ferrers*, Hob. 175; 1 Burn's Ecc. L. 268). The usual fee for the parson for breaking the ground is 3*s.* 4*d.*; and for interment in the chancel is 6*s.* 8*d.* (Degge 146). Whether a fee is due to the incumbent for erecting a monument in the churchyard is somewhat doubtful. In *Bardin* v. *Calcott* (*supra*), Lord Stowell considered that where a custom for payment of a fee is shown, such a practice will be supported.

By 59 Geo. III. c. 134, s. 11, the Commissioners under that Act are empowered, with the consent of the vestry and of the bishop, to fix any table of fees for any parish. The customary fees are payable in the case of burial without the service of the Church, see Burial Laws Amendment Act, 1880 (43 & 44 Vict. c. 41), s. 5. Under the City of London Burials Act, 1857 (20 & 21 Vict. c. 35), s. 1, the fees set out in the schedule to that Act are to be paid to and charged by the incumbents of parishes within the City of London, for interments in the consecrated part of the City of London Cemetery at Little Ilford, Essex.

From and after the consecration of any burial ground provided by a burial board under the Burial Act, 1852 (15 & 16 Vict. c. 85, s. 32), the burial ground

shall be deemed to be the burial ground of the parish for which the same is provided, and where the same is provided for two or more parishes such burial ground shall be in law as if such parishes were one parish, and as if such burial ground were the burial ground of such one parish; and every incumbent or minister of the parish, or of each of the parishes (as the case may be), for which such burial ground is provided, shall by himself and his curate, or duly qualified person authorised by him, perform the duties and have the same rights and authorities for the performance of religious service in the burial in such burial ground, or in the consecrated portion thereof, of the remains of parishioners or inhabitants of the parish of which he is such incumbent or minister, and shall be entitled to receive the same fees in respect of such burials which he had previously enjoyed and received; and the clerk and sexton of such parish, or of each of such parishes, shall (when necessary) perform and exercise the same duties and functions in respect of the burial of the remains of parishioners or inhabitants of the parish of which he is clerk or sexton in such burial ground, or the consecrated portion thereof, and shall be entitled to receive the same fees on such burials as he has previously performed and exercised and received, as if such burial ground were the burial ground of the respective parish of such incumbent or minister, clerk and sexton, respectively (s. 32).

Under the above section the words "every incumbent or minister of a parish" have been held to mean all incumbents *in* a parish (*Day, Cobb, and Binder* v. *Peacock*, [1865] 12 L. T. N. S. 571; 18 C. B. N. S. 702; 11 Jur. N. S. 428; 34 L. J. C. P. 225). The reservation contained in the section as to fees applies only to

the case of parishioners or inhabitants, and where a church had no burial ground in which, before being closed by order in council, persons dying within the district would have been buried as of right, the incumbent was held not entitled to any burial fees in a cemetery provided for the district under the Burial Acts (*Hornby* v. *Burial Board of Toxteth Park*, [1862] 8 Jur. N. S. 531; 31 L. J. Ch. 643). But by 20 & 21 Vict. c. 81, s. 5, until a new burial ground shall, under this section (5), be provided and consecrated for any new parish or district created, or to be created, pursuant to 6 & 7 Vict. c. 37, 7 & 8 Vict. c. 94, and 19 & 20 Vict. c. 104, or any or either of these Acts, and to which the said Acts or any or either of them apply, the incumbent, clerk, and sexton of such new parish or district (if any burial ground has been, or shall be, provided under the above-mentioned Acts for the burial of the dead, or any or either of them, for any parish or parishes out of rates to which such new parish or district or any part thereof shall have contributed, or contribute or be liable) shall, with respect to the burial in such last-mentioned burial ground of the remains of the parishioners or inhabitants of such new parish or district, or of such parts thereof as shall have contributed or contribute as aforesaid, as the case may be, perform the same duties and have the same rights, privileges, and authorities, and be entitled to the same fees in respect of such burials as if the burial ground were exclusively the burial ground of such new parish or district. This is subject to all the provisions to which incumbents, clerks, and sextons of original parishes are respectively subject in and by the Burial Acts, or any of them, and nothing in the section of this Act is to affect the rights or privileges of any existing incumbent,

clerk, or sexton, without the consent of such incumbent, clerk, or sexton respectively.

In the case of *Cronshaw* v. *Wigan Burial Board*, [1873] L. R. 8 Q. B. 217; 42 L. J. Q. B. 137; 25 L. T. N. S. 536; 28 L. T. N. S. 283, a consecrated church and district were brought into existence under the provision of the Church Building Acts, 1818 and 1819 (58 Geo. III. c. 45, and 59 Geo. III. c. 134), such district not being at the time of the passing of Lord Blandford's Act (19 & 20 Vict. c. 104) a separate and distinct parish for ecclesiastical purposes, and the incumbent of which, under the authority of the order in council, was entitled for his own benefit to the entire fees arising from the publication and performance of banns of matrimony, marriages, churchings, and baptisms. The Vicar of St. Thomas, Wigan, brought an action for the recovery of fees claimed to be payable by the Wigan Burial Board to the plaintiff for burials in the burial ground provided by the defendants (the Burial Board) for the borough and township of Wigan. The Court of Queen's Bench (Cockburn, L.C.J., Mellor, Lush, and Hannen, JJ.) held that s. 5 of Lord Blandford's Act (19 & 20 Vict. c. 104) applied and entitled the plaintiff to judgment, and their decision was affirmed by the Exchequer Chamber.

By Lord Blandford's Act (19 & 20 Vict. c. 104), Commissioners may, on application of the incumbent and with the consent of the bishop, authorise solemnisation of burials, &c. in district parishes, the fees to be paid to the incumbent (s. 11); and in every case where fees are reserved to the incumbent of original parish, the same shall be accounted for every three months; after first avoidance of original incumbency, such fees shall belong to the district incumbent (s. 12). Every parish

created thereunder, or under Sir Robert Peel's Act (6 & 7 Vict. c. 37, and 7 & 8 Vict. c. 94), shall be held to be an ecclesiastical district for the purposes of the Burial Acts. The sexton of a chapelry constituted under 59 Geo. III. c. 134, s. 16, which had been thus formed by the Commissioners into a distinct parish, was held, by virtue of the above proviso, entitled to the fees in respect of burials in a cemetery subsequently provided for the mother parish (*Ormerod* v. *Blackburn Burial Board*, [1873] 28 L. T. N. S. 438; but see *White* v. *Norwood Burial Board*, [1885] 16 Q. B. D. 58). Where a local cemetery Act provided that fees should be paid to the incumbent of the parish, or other ecclesiastical district, &c., it was held that burial fees, in respect of persons dying within a district created after the passing of the local Act, though the order in council was silent as to burials, were payable to the incumbent of such district, and not to the incumbent of the mother parish (*Vaughan* v. *South Metropolitan Cemetery Company*, [1860] 1 Johns. & H. 256; 30 L. J. Ch. 265). See also the same principle upheld by the Court of Appeal, in *Bowyer* v. *Stantial*, [1878] 3 Ex. D. 315. A parish chapel in an ancient churchyard having been declared by order in council under 19 & 20 Vict. c. 104, to be the church of a new district, was held not to vest in the incumbent of such new district by the operation of s. 10 of that Act, but the freehold remained in the vicar of the mother parish (*Champneys* v. *Arrowsmith*, [1867] L. R. 2 C. P. 602; 17 L. T. N. S. 261; L. R. 3 C. P. 107; 37 L. J. C. P. 22).

By s. 33 of the Burial Act, 1852 (15 & 16 Vict. c. 85), by which a burial board may, subject to restrictions and conditions, sell the exclusive right of burial either in perpetuity or for a limited period in any part of

a burial ground provided by such board, and the right of constructing any vault or place of burial, with the exclusive right of burial therein, either in perpetuity or for a limited period, and the right of erecting and placing any monument, gravestone, tablet, or monumental inscription in such burial ground, there is reserved to the incumbent or minister of the parish out of the fees or payments to be made in respect of the acquirement of such rights in the consecrated part of such burial ground, a right to payment of such fees as shall be settled and fixed by the vestry with the approval of the bishop of the diocese, or if no such fees or sums shall have been settled, then of such fees as he would by law or custom have been entitled to on the grant of the like rights in the burial ground of his parish. See *Ashby* v. *Harris*, [1868] L. R. 3 C. P. 523; 37 L. J. M. C. 164; *McGough* v. *Lancashire Burial Board*, [1888] 21 Q. B. D. 323.

Every burial board under the Burial Acts shall and may (without prejudice to the fees and payments herein specially provided for) fix and settle and receive such fees and payments in respect of interments in any burial ground provided by such board as they shall think fit, and also the sums to be paid for the exclusive right of burial, either in perpetuity or for a limited period, in any burial ground provided by such board, and also the right of constructing any vault or place of burial with the exclusive right of burial therein in perpetuity or for a limited period, and also the right of erecting and placing any monument, gravestone, tablet, or monumental inscription in such burial ground, and every burial board, with the consent of the vestry, may from time to time revise and alter such fees, payments, and sums as aforesaid; and a table showing

such fees, payments, and sums, and all other fees and payments in respect of interments in such ground, shall be printed and published, and shall be affixed and at all times continued on some conspicuous part of such burial ground (*a*), 15 & 16 Vict. c. 85, s. 34.

All such fees, payments, and sums as may be fixed, settled, and received by any burial board under section thirty-four of the Burial Act, 1852, shall be so fixed and settled subject to the approval of a secretary of state; and no such fees, payments, or sums shall be altered or varied without such approval (18 & 19 Vict. c. 128, s. 7).

No fees shall be charged or received by any burial board in respect of any service done or right granted in the unconsecrated portion of any burial ground provided by such board, but such as are identical in amount with the fees charged and received in respect of the same service or right in the consecrated portion of such ground, less any such portion of such corresponding fees or payments which may be received for or on account of any incumbent, churchwarden, clerk, or sexton, or of any trustee for or on behalf of any incumbent, churchwarden, clerk, or sexton (20 & 21 Vict. c. 81, s. 17).

Where at the time of the discontinuance of interment in any burial ground the fees in respect of burials therein are divided between the incumbent of the parish and the incumbent of any district parish or other ecclesiastical district, each incumbent shall have the same proportion of the fees in the burial ground to be provided under the Burial Acts as he was entitled to in respect of interments in the old burial ground (15 & 16 Vict. c. 85, s. 35).

(*a*) A scale of the fees which have been adopted by some burial boards, is given in the Appendix, and also a suggested scale.

All Acts, laws, and customs shall apply in the district parishes formed under the Act 59 Geo. III. c. 134, in the same manner as if the same had been ancient and distinct parishes (s. 17). But the said Commissioners may direct that all or any of the fees, in case of division of any parish into district parishes, shall continue to belong to the incumbent of the original parish church (3 Geo. IV. c. 72, s. 12). Similar provisions for additional churches without division of parishes by 1 & 2 Will. IV. c. 38, s. 14. If districts subsequently assigned to such churches, Commissioners with consent of bishop, or bishop alone, may apportion fees after next avoidance of the parish church to incumbents of district churches (3 & 4 Vict. c. 60, s. 18). By 8 & 9 Vict. c. 70, s. 10, fees in church of any consolidated chapelry formed as therein mentioned, to belong to incumbent thereof after next avoidance of incumbency of original parish church. By the 14 & 15 Vict. c. 97, ss. 2, 3, 4, compensation may be made by Commissioners to incumbents of original parishes for loss of fees by reason of their transfer to incumbents of district chapelries, consolidated chapelries of churches endowed under 1 & 2 Will. IV. c. 38 : and after such compensation, or where no reservation of fees was made, all such fees shall belong to the incumbents of such district chapelries, &c. (14 & 15 Vict. c. 97, ss. 5, 6).

Where fees or any portion of fees payable on interments, or for any monument, gravestone, tablet, or monumental inscription, in the burial ground of any parish for which a burial ground is provided alone or jointly with any other parish or parishes under the Burial Acts, are by law or custom payable to the churchwardens of any parish, or to trustees or other persons, for or towards the payment of any annuity or stipend to the

incumbent or minister, or any other parochial purpose, or the discharge of any debt or liability, such fees or portion of fees shall be payable in the burial ground to be provided as aforesaid for such parish under the Burial Acts, and shall be received by the burial board and paid to the parties entitled to receive the same; and where fees or payments have been received on interments, or for any monument, gravestone, tablet, or monumental inscription, in the burial ground of any such parish by any such churchwardens, or by trustees or other persons, for the purpose of discharging any periodical payment or other liability, the burial board, upon the request of such churchwardens, trustees, or persons, may pay from time to time, out of the fees and monies received by them on account of such parish, such amount as may be necessary for discharging such periodical payment or liability (15 & 16 Vict. c. 85, s. 36).

The vestry of any parish may from time to time, if they think fit, with the consent of the bishop of the diocese, revise and vary the fees payable to the incumbent, clerk, and sexton, and other persons and bodies respectively, under the provisions of the Burial Act, 1852, or, with such consent as aforesaid, substitute for the fees payable to such incumbent, clerk, and sexton, and other persons and bodies respectively, a fixed annual sum of such amount as to such vestry may seem just, to be payable by such periodical payments as such vestry may appoint, and in such last-mentioned case the fees which would otherwise be payable under that Act to the incumbent, clerk, and sexton, and such other persons and bodies respectively, shall be paid to the burial board, and such fixed payments as aforesaid shall be paid by such board (15 & 16 Vict. c. 85, s. 37).

Where a burial ground is provided under the Burial

Acts for the common use of two or more parishes, in case any question arise among the incumbents of such parishes as to the performance of the burial service by a chaplain to be paid by means of contributions from such incumbents, or deductions from fees or sums payable to them, or otherwise touching the performance of service in the consecrated part of such ground, the bishop of the diocese shall from time to time confirm any arrangement which a majority, or, in case of equal numbers, one-half of the incumbents shall approve, and such arrangement so confirmed shall be binding upon all the parties concerned (15 & 16 Vict. c. 85, s. 39).

Where any body is buried in any of the cemeteries mentioned in Schedule (B) to the Burial Act, 1852 (*a*), at the expense of any union or parish, the fee or sum to be paid or payable on the interment of such body, or otherwise in respect thereof, to the incumbent of the parish or ecclesiastical district from which such body is removed for interment, shall not exceed the sum of one shilling, or where the incumbent before the passing of that Act receives in respect of the like burial in the ground of his parish more than one shilling shall not exceed the sum then received, and in no case shall exceed two shillings and sixpence; and no other fee or sum whatsoever shall be payable in respect of such interment, to or for the use of any person as an officer of such parish or district, or for or on behalf of such parish or district (15 & 16 Vict. c. 85, s. 49).

Section forty-nine of the Burial Act, 1852, extends to all cemeteries then established and thereafter to be established under the authority of Parliament in like manner as to those mentioned in Schedule (B) to that Act, and as respects the cemeteries to which such

(*a*) This schedule applies to the metropolis only. See p. 140.

section is thereby extended, the same shall also apply in respect of burials at the expense of any hospital or infirmary in like manner as to burials at the expense of a union or parish (16 & 17 Vict. c. 134, s. 7).

Where under any local Act fees on interments in any burial ground of any parish are payable to the churchwardens of such parish, or to any trustees or other persons, for the purpose of enabling them to pay an annuity or stipend to the incumbent or minister, the fees which under the Burial Acts or any Act relating to any cemetery company, would on the interment in the cemetery of any company of any body brought from such parish be payable to such incumbent or minister, shall be payable to the said churchwardens, trustees, or persons, and any surplus of such fees which may remain in their hands after payment of such annuity or stipend shall be paid to such incumbent or minister (15 & 16 Vict. c. 85, s. 50).

MORTUARIES AND CORSE PRESENTS.

Mortuarium is defined by Lord Coke as "a gift left by a man at his death pro recompensatione substractionis decimarum personalium et oblationum" (2 Inst. 491; see also Scld. on Titles 287). Originally, however, a mortuary seems to have been merely an oblation to the parish church of the donor, and not a recompense for forgotten tithes. In Saxon times a funeral due was paid under the name of pecunia sepulchralis, symbolum animæ or saul-sceat (soul-shot), and its payment was enforced by the council of Aenham and by the laws of Canute (Phill. Ecc. Law 685). Dugdale (*a*) in his

(*a*) The learning of later writers on this topic is mostly derived from Dugdale, who acknowledges his own indebtedness to "Master Thomas Barlow of Qu. Coll. Oxon., my singular friend."

Antiquities of Warwickshire (2nd ed. 729) gives examples of wills containing bequests both for mortuaries and for forgotten tithes. Amongst others he cites from a will of Henry VIII.'s reign: "Item I bequethe for my Mortuaries or cors presente a black Geldyng amblyng that allmighty God may the rather take my soul into his mercy and grace; item I bequethe unto the high Aultar of Aston for tithes and offerings negligently forgotten iii s iiii d."

Whether there was any difference between mortuaries and corse presents seems doubtful (1 Stillingfleet, Ecc. Cases 245).

When the making of wills was entirely in ecclesiastical hands, some sufficient mortuary was considered essential to a will. Mortuaries were distinguished into dead mortuaries, such as money, or inanimate goods, and mortuaria viva, the latter being live stock or "quick goods." It was apparently customary to bequeath the second best beast to the Church, the first best being due to the lord as a heriot. Two constitutions of Archbishop Winchelsie and a constitution of Simon Langham enjoin the gift of the second best beast. Horses given as mortuaries were frequently brought to the church at the burial, and this custom appears to be the origin of taking horses to funerals.

The statute of Circumspecte Agatis, 13 Ed. I. st. 4, enacts that if a parson demand mortuaries in places where a mortuary hath been used to be given, the spiritual judge shall have power to take knowledge, notwithstanding the King's prohibition. The exaction of mortuaries, having become oppressive, was restrained by 21 Hen. VIII. c. 6.

By that statute no mortuary is to be demanded from a person possessed at death of moveables of less value

than 10 marks; if his moveables are worth between 10 marks and 30*l.*, the mortuary is limited to 3*s.* 4*d.*; if between 30*l.* and 40*l.*, to 6*s.* 8*d.*; if over 40*l.*, to 10*s.* If the amount due by custom before the statute was smaller, the scale is not to apply. Mortuaries are only to be taken where previously payable by custom, and not from femmes coverts, barons children, or persons not keeping house. Persons are to pay in the "place of their most dwelling habitation and there but one mortuary," and wayfaring men are liable only to the parish where they reside.

The better opinion is that the recovery of mortuaries is within the sole jurisdiction of spiritual courts (*Johnson* v. *Oldham*, 1 Ld. Raym. 609; sub nom. *Johnson* v. *Ryson*, 12 Mod. 416; *Marke* v. *Guilbert*, 1 Keb. 919; Phill. Ecc. Law 688), though, if the custom be disputed, its existence must be determined by the temporal courts, and the latter will issue a prohibition if the ecclesiastical courts will not admit the plea (*White's Case*, Cro. Eliz. 151). See also *Torrent* v. *Burley*, 2 Stra. 715, and *Manby* v. *Curtis*, [1816] 2 Price 284; 3 Eag. & Yo. 733.

7 & 8 Will. III. c. 6, s. 2, does not give justices of the peace jurisdiction to hear complaints of the subtraction of mortuaries (*Ayrton* v. *Abbott*, [1849] 14 Q. B. 1).

The Tithe Commutation Act does not extend to mortuaries unless by special provision to be inserted in some parochial agreement and specially approved by the commissioners (6 & 7 Will. IV. c. 71, s. 90).

Under 2 & 3 Vict. c. 62, s. 9, the landowners and titheowners having such interest in the lands or tithes of a parish as is required for making of a parochial agreement, may at any time before the confirmation of any apportionment after a compulsory award enter into a parochial agreement for the commutation of mortuaries.

OBLIGATION AND RIGHT TO DISPOSE OF THE DEAD.

The custom of disposing of the dead in this country, as was already stated, *ante*, p. 1, has from time immemorial been by burial, but it cannot now be doubted that disposal by other decent means is lawful. In the case of *R.* v. *Price*, [1884] 12 Q. B. D. 247; 15 Cox C. C. 389; 53 L. J. M. C. 51; 33 W. R. 45, Stephen, J., held cremation not to be a misdemeanour, unless amounting to a public nuisance, or carried out with the intention of preventing an inquest, and observed that many dicta to be found in previous judgments apparently treating burial as the only legal way of disposing of dead bodies, were not to be regarded as declarations of the illegality of cremation, but were to be explained as having been used in cases where no question as to cremation arose, and where the right of certain persons to refuse burial was the only point at issue. In *R.* v. *Stephenson*, [1884] 13 Q. B. D. 331, a conviction for burning a body to avoid an inquest was upheld. In *In re Dixon*, [1892] P. 386, a faculty for removal of a body from a churchyard for cremation was refused, but cremation before burial, and burial of the ashes in consecrated ground, was regarded as legal. See *In re Kerr*, [1894] P. 284.

It is the duty of the executors of a deceased person to bury the body in manner becoming his estate (*Williams* v. *Williams*, [1882] 20 Ch. D. 659; 51 L. J. Ch. 385; 46 L. T. N. S. 275; 46 J. P. 726); this is the common law of the land, which casts the like duty upon the person under whose roof the death takes place (*R.* v. *Stewart*, [1840] 12 A. & E. 773; 4 P. & D. 349). Such person cannot keep the body unburied, nor do anything which prevents Christian burial; he cannot cast the body out, so as to expose it to violation, or to offend

the feelings or endanger the health of the living; for the same reason he cannot carry the dead body uncovered to the grave. There is no property in a dead body (*R.* v. *Sharpe*, [1857] Dea. & Bell 160; 7 Cox 214; 3 Jur. N. S. 192; 26 L. J. M. C. 47), therefore a creditor could not and cannot retain the dead body of his debtor for security for his debt, nor could the gaoler detain the dead body of a person imprisoned for debt (*R.* v. *Fox*, [1841] 2 Q. B. 247), nor could a person by will dispose of his dead body.

And it cannot be the subject of larceny, and an indictment should be laid for stealing the shroud, laying the property in the executor or person burying the corpse (*Haynes' Case*, 12 Co. Rep. 113; *R.* v. *Haynes*, 2 East P. C. 652); but it is a misdemeanour to disinter (without lawful authority) a body for any purpose whatever (*R.* v. *Lynn*, [1788] 2 T. R. 733; *Foster* v. *Dodd*, [1867] 8 B. & S. p. 854; *R.* v. *Sharpe*, *supra*). The executors of a deceased person are entitled to allowance of the expense of the funeral of their testator to an amount corresponding to the status or position in life of the deceased person (*Edwards* v. *Edwards*, [1834] 2 Cr. & M. 612).

If an executor himself gives orders for a funeral he is personally liable, and even without any order on his part he is liable to pay the funeral expenses, if he has assets available for the purpose (*Tugwell* v. *Heyman*, [1812] 3 Camp. 298; *Rogers* v. *Price*, [1829] 3 Y. & J. 28). Apparently the liability in the latter case is grounded on an implied contract; and *semble* the action lies against the executor personally, and the judgment would be *de bonis propriis*, though the maintenance of the action depends on the fact of his being an executor with assets. Therefore *plene administravit*

is no defence, though the death of the testator entirely without assets is a defence (*vide* Williams on Executors, 9th edition, pp. 1678–1681). Jessel, M.R., in the case of *Sharp* v. *Lush*, [1879] 10 Ch. D. at p. 472, expressed an opinion that the executor is liable without either an order or assets; but this seems doubtful.

If a third person has given the order and paid the expenses he can recover from the executor, except in the case of an heir at law, who has no remedy for voluntary payment against the personalty (*Coleby* v. *Coleby*, [1866] 12 Jur. N. S. 496). Such third person can, however, only recover reasonable expenses unless the executor has ratified his acts (*Brice* v. *Wilson*, [1834] 8 A. & E. 349, note (*c*)). Administration with the will annexed has been granted to a creditor for funeral expenses, but if the creditor be an undertaker, full information of the origin of the debt must be given to the court (*Newcombe* v. *Beloe*, [1867] L. R. 1 P. M. & D. 314; *In the Goods of Fowler*, [1852] 16 Jur. 894).

The husband is liable for the expense necessary attendant upon the burial of his wife, whoever may bury her, even if living separate from his wife, provided it be under such circumstances as would render him during her life liable for her necessaries (*Bradshaw* v. *Beard*, [1862] 12 C. B. N. S. 344; 6 L. T. N. S. 458; 31 L. J. C. P. 273), and even if the husband be an infant he will still be liable (*Chapple* v. *Cooper*, [1844] 13 M. & W. 252; 13 L. J. Ex. 286). His liability is not removed by the fact that he is living abroad (*Jenkins* v. *Tucker*, [1788] 1 H. Bl. 91), or separated from his wife at the time of her death (*Ambrose* v. *Kerrison*, [1851] 10 C. B. 776; 20 L. J. C. P. 135), or that the person seeking to recover funeral expenses is a mere volunteer (*S. C.*). A husband who was executor under his wife's will has, however, been

allowed to retain the expenses of her burial though the estate was insolvent (*In re M'Mynn*, [1886] 33 Ch. D. 575; 55 L. T. N. S. 834; 55 L. J. Ch. 845; 35 W. R. 179). A parent is liable for the expense of, and is bound to provide, Christian burial for his child if he has money for that purpose, but not otherwise (*R.* v. *Vann*, [1851] 2 Den. C. C. 325; 15 Jur. 1090; 21 L. J. M. C. 39).

If a pauper die in any parish house, poor house, or union, the parish or union is bound to bury the body; the expense falls upon such parish or union and not the parish or union to which the deceased belonged (*R.* v. *Stewart*, [1840] 12 Ad. & Ell. 773; 4 P. & D. 349). But by 7 & 8 Vict. c. 101, s. 31, the expense of burials by direction of the guardians may be charged to the poor rate of the parish to which the deceased had been chargeable or in which he died; and by 28 & 29 Vict. c. 79, s. 1, upon the common fund of the union of a parish in union and not upon the separate parish.

By 31 & 32 Vict. c. 122, s. 13, the guardians of a union or parish may, with the consent of the Poor Law Board, send idiotic paupers to asylums maintained by the county rate or public subscription, or may, with the like consent and the consent of the guardians of another parish or union, send an idiotic, imbecile, or insane inmate of a workhouse to the workhouse of the latter parish or union, and may pay for his burial there.

By the Lunacy Act, 1890 (53 & 54 Vict. c. 5), s. 297, the expenses of the burial of a pauper lunatic in any institution for lunatics shall be borne by the union to which the lunatic is chargeable, or by the local authority liable for his maintenance, and paid by the guardians of the union or the treasurer of the authority.

The Public Health Act, 1875 (38 & 39 Vict. c. 55), s. 142, provides that where the body of a person dead

from any infectious disease is retained in a sleeping or dwelling room, or a dead body in a state dangerous to the health of the inmates of a house or room is there retained, a justice may, on the certificate of a medical practitioner, order the removal of the body to any mortuary provided by the local authority at the latter's cost, and direct its burial within a prescribed time; and unless the friends or relatives of the deceased undertake to bury and do bury the body within such time, the relieving officer is to bury it at the expense of the poor rate, and such expense may be summarily recovered from any person legally liable for the burial. The obstruction of any such order of a justice is made a criminal offence.

Similar but slightly extended provisions are made by the Infectious Disease (Prevention) Act, 1890 (53 & 54 Vict. c. 34), ss. 8, 9, and 10, which can be adopted by rural and urban sanitary authorities, and by the Public Health (London) Act, 1891 (54 & 55 Vict. c. 76), s. 89. as regards the metropolis.

48 Geo. III. c. 75, provides that the churchwardens or overseers of a parish, upon notice that a body has been cast up by the sea within the limits of the parish, shall cause such body to be buried in the parish churchyard at a cost not exceeding the cost of a burial of a person buried by the parish. In extra-parochial places similar duties are imposed on the Constable or Headborough. Lords of Manors are to be allowed to bury dead bodies cast up within the manor, so that evidence of their right to wrecks may be preserved. The persons finding the body are required, on pain of punishment, to communicate the fact of its discovery.

By 49 Vict. c. 20, the provisions of this Act are extended to bodies found in or cast on shore from tidal

waters, or found floating or sunk in such waters. Notice to a police-constable of the finding of such bodies is made sufficient notice under this Act, and the constable must communicate the notice to the parish officers.

DISINTERMENT.

Though the personal representatives of the dead are entitled to possession of the body for purposes of burial (*Williams* v. *Williams*, [1882] 20 Ch. D. 659), the body when buried comes under the protection of the public (*per* Byles, J., in *Foster* v. *Dodd*, [1867] L. R. 3 Q. B. 67). If buried in consecrated ground, it is in the protection of the Ecclesiastical Court of the diocese (*In re Dixon*, [1892] P. 386), and its disinterment, except in the cases mentioned below, is an offence by ecclesiastical law (*Adlam* v. *Coulthurst*, [1867] L. R. 2 A. & E. 30; 36 L. J. Eccl. 14; 31 J. P. 820). Whether the place of burial be consecrated or unconsecrated (*R.* v. *Jacobson*, [1880] 14 Cox C. C. 522), such disinterment is a misdemeanour at common law (*R.* v. *Sharpe*, [1857] 1 D. & B. 160; 7 Cox C. C. 214; 26 L. J. M. C. 47), and also punishable under 20 & 21 Vict. c. 81, s. 25. The property in the coffin and shroud remains in the persons who provided them, and their appropriation is a criminal offence (*Hayne's Case*, [1616] 12 Co. Rep. 113). In the case cited it was said that "if apparel be put upon a boy, this is a gift in law for the boy, for the boy hath a capacity to take it; but a dead body being but a lump of earth hath no capacity. Also it is no gift to the person, but bestowed on the body for the reverence towards it to express the hope of the resurrection."

Disinterment and removal of dead bodies are allowed by law in the following cases:

(1) Under licence of the Home Secretary, by virtue of section 25 of 20 & 21 Vict. c. 81, or as provided in section 23 of that Act. If, however, such licence be obtained by fraud, the disinterment will be as illegal as if unauthorised (*Williams* v. *Williams*, [1882] 20 Ch. D. 659).

(2) Under a faculty from the Ecclesiastical Court of the diocese (see Gibs. 454). The jurisdiction of the Court for this purpose only extends to consecrated ground (*In re Pope*, [1857] 15 Jur. 614), and it possesses a discretion in exercising its jurisdiction. If the application be made on private grounds, the Court will be guided by the wishes of the deceased and of the friends of the deceased (*In re Dixon*, [1892] P. 386). In the case cited, a faculty for disinterment with a view to cremation was refused. In another case (*In re Pope*, *supra*), disinterment was allowed for purposes of identification. Faculties for removal for public purposes—*e.g.* on sanitary grounds—will also be granted, in which case the wishes of the relatives of the deceased will be considered as to the place of removal (*Rector of St. Helen's, Bishopsgate*, v. *Parishioners*, [1892] P. 259). The limits of the Court's discretion in such a case are at present uncertain. It was formerly thought that the removal of bodies could not be allowed for secular purposes (see authorities collected in *In re Plumstead Burial Ground*, [1895] P. 225). Latterly, Dr. Tristram, Chancellor of the Diocese of London, has extended the scope of the Court's jurisdiction, and has granted faculties for purposes formerly regarded as secular (*Vicar, &c. of St. Mary Abbot's* v. *Parishioners of the same*, [1873] Tristram's Reps. 17; *Vicar, &c. of St. Botolph* v. *Parishioners of the same*, [1892] P. 161;

In re St. Nicholas Cole Abbey, [1893] P. 58, and the cases there cited *arguendo*). In the last-mentioned case an electric lighting company was allowed to remove human remains, to construct underground chambers. Recently, however, Mr. Dibdin, Chancellor of the Diocese of Rochester, refused to follow these decisions, and adhered to the old limitation (*In re Plumstead Burial Ground, supra*).

(3) The coroner formerly had a common law power to order the disinterment of a body, either for an original inquisition, or where a fresh inquisition was necessary (Hale 2 P. C. 58; 2 Hawk P. C., c. 9, s. 23; Jervis on Coroners, 5th ed. 27, 55). If the inquisition was quashed by a superior court, that court also had power to order exhumation of the body (*R.* v. *Clerk*, 1 Salk. 377; *R.* v. *Bond*, 1 Str. 22). Whether the powers of the coroner have been abridged by s. 25 of 20 & 21 Vict. c. 81 is doubtful. The power of the court seems to be inferentially preserved by s. 6 of the Coroners Act, 1887, which provides that where the High Court of Justice orders an inquest to be held, or quashes an inquest already held, it shall not be necessary upon such an inquest to view the body, unless the court otherwise order.

PROVISION OF MORTUARIES.

As pointed out *supra*, p. 10, a faculty has been granted to erect a mortuary on a part of a churchyard closed under an order in council (*Hansard* v. *St. Matthew, Bethnal Green*, [1878] 4 P. D. 46).

But now by the Disused Burial Grounds Act, 1884 (47 & 48 Vict. c. 72), s. 3, it is not lawful to erect any buildings upon a disused burial ground except for the

purpose of enlarging a church, chapel, meeting house, or other place of worship.

By the Burial Act, 1852 (15 & 16 Vict. c. 85), s. 42, a burial board, with the approval of the vestry and subject to the provisions of that Act and regulations made thereunder, and the churchwardens and overseers of the poor of any parish in the metropolis for which a burial board shall not have been appointed by the direction of the vestry, may hire, take on lease, or otherwise provide fit and proper places in which bodies may be received and taken care of previously to interment, and may make arrangements for the reception and care of the bodies deposited therein. These powers of the churchwardens and overseers may in rural parishes be exercised by the overseers alone. See Local Government Act, 1894 (56 & 57 Vict. c. 73), s. 5, sub-s. 2 (*a*) (*b*).

By s. 44 of the Burial Act, 1852 (15 & 16 Vict. c. 85), the Secretary of State for the Home Department may make regulations for mortuaries established under that Act.

By the Public Health Act, 1875 (38 & 39 Vict. c. 55), s. 141, any local authority (under the Public Health Act, 1875) may, and if required by the Local Government Board shall, provide and fit up a proper place for the reception of dead bodies before interment (in that Act called a mortuary), and may make bye-laws with respect to the management and charges for the use of the same; and may provide for the decent and economical interment at fixed charges of any body received into the mortuary. By s. 142 justices may in certain cases order the removal of a body to the mortuary. By s. 143 local authorities may provide places otherwise than at a workhouse or mortuary for *post mortem* examinations.

By the 88th section of the Public Health (London) Act, 1891 (54 & 55 Vict. c. 76), every sanitary authority (*i.e.* in London) shall provide and fit up a proper place for the reception of dead bodies before interment (in that Act called a mortuary), and may make bye-laws with respect to the management and charges for the use of the same; and by s. 91 of that Act such sanitary authorities may, with the approval of the County Council, combine for the purpose of providing mortuaries for the joint use, or one sanitary authority may contract for the use of the mortuary provided by another.

The London County Council may provide one or two mortuaries for the reception, on the order of a coroner, of unidentified dead bodies, together with any clothing or articles found with or on such dead bodies for the purpose of their preservation with a view to the ultimate identification of such bodies. The London County Council may provide appliances for such preservation, and may make regulations (subject to the Home Secretary's regulations) for the management of such mortuaries (54 & 55 Vict. c. 76), s. 93.

THE CLOSING OF CHURCHYARDS.

The remedy for the evil arising from overcrowded churchyards and burial grounds was provided for cases in the metropolis by the provisions of the Burial Act, 1852 (15 & 16 Vict. c. 85). This statute applied to the metropolis only, but the provisions contained in ss. 2, 10 to 42 (inclusive), 44, 50, 51, and 52 of this Act were extended to the rest of England by the Burial Act, 1853 (16 & 17 Vict. c. 134), ss. 1 and 7. These two statutes have been amended and extended by other

Burial Acts passed between 1854 and 1885, the whole group of statutes being known as the Burial Acts, 1852 to 1885 (see 59 & 60 Vict. c. 14). The whole of these Acts are set out in full in the subsequent pages of this book; but as a short epitome of the provisions of these Acts, under the headings of Closing Churchyards, Formation of Burial Boards, and Opening of New Burial Grounds, has been found useful, such epitome is here given.

In case it appear to Her Majesty in council, upon the representation of a secretary of state, that for the protection of the public health the opening of any new burial ground in any city or town, or within any other limits, save with the previous approval of a secretary of state, should be prohibited, or that burials in any city or town, or within any other limits, or in any burial grounds or places of burial, should be wholly discontinued, or should be discontinued subject to any exception or qualification, Her Majesty may, by and with the advice of her privy council, order that no burial ground shall be opened in such city or town, or within such limits, without such previous approval, or (as the case may require) that after a time mentioned in the order burials in such city or town, or within such limits, or in such burial grounds or places of burial, shall be discontinued wholly, or subject to any exceptions or qualifications mentioned in such order, and so from time to time as circumstances may require: Provided that notice of such representation, and of the time when it shall please Her Majesty to order the same to be taken into consideration by the privy council, shall be published in the *London Gazette*, and shall be affixed on the doors of the churches or chapels of, or in some other conspicuous places within, the parishes affected

by such representation, one month before such representation is so considered, and that no such representation shall be made in relation to the burial ground of any parish until ten days previous notice of the intention to make such representation shall have been given to the incumbent and vestry clerk or churchwardens of such parish (16 & 17 Vict. c. 134, s. 1).

Her Majesty may, upon the representation of a secretary of state, by and with the advice of her privy council, from time to time order such acts to be done by or under the directions of the churchwardens, or such other persons as may have the care of any vaults or places of burial, for preventing them from becoming or continuing dangerous or injurious to the public health; and every such order in council shall be published in the *London Gazette*, and such churchwardens or other persons shall do or cause to be done all acts ordered as aforesaid, and the expenses incurred in and about the doing thereof shall be paid out of the poor rates of the parish: Provided that no such representation shall be made until ten days previous notice of the intention to make such representation shall have been given to the churchwardens or other persons, or one of the churchwardens or other persons, having the care of the vaults or places of burial to which the representation relates (20 & 21 Vict. c. 81, s. 23).

Where it appears to a secretary of state, on the representation of any person authorised by him to inspect any vaults or place of burial in relation to which an order in council has been or shall have been issued under the said recited enactment, that any acts which by such order in council are ordered to be done by or under the direction of persons other than churchwardens having the care of such vaults or place of burial are not

done or performed within a reasonable time, and according to the intent of such order in council, such secretary of state may, by writing under his hand, authorise and direct the churchwardens of the parish in which such vaults or place of burial may be situate forthwith to do or complete the acts in such order in council mentioned, or such of them as remain undone, and such order of the secretary of state shall be obeyed by such churchwardens, and they and all persons acting under their direction shall have the same power of entering and doing all such acts upon the premises to which the order in council relates as if the said acts had by the order in council been directed to be done by such churchwardens, and such vaults or place of burial had been under their care; and any person who shall obstruct such churchwardens or any others acting under their direction in relation to the premises, or remove or interfere with the works done by such churchwardens, shall be guilty of a misdemeanour (22 Vict. c. 1, s. 1).

The provisions of the Burial Act, 1853, shall not extend to authorise the discontinuance of burials, or to prevent the burial of the body of any person in any cemetery established under the authority of any Act of Parliament, or in any burial ground or cemetery to be hereafter provided with the approval of a secretary of state (16 & 17 Vict. c. 134, s. 5).

Her Majesty may, by order made with the advice of her privy council, on the representation of a secretary of state, from time to time establish such regulations as to Her Majesty may seem proper for the protection of the public health, and for the maintenance of public decency, in respect of all burials in common graves in any cemeteries named in schedule (B) to the Burial Act, 1852, and in respect of the like burials in any cemetery

established under the authority of any local Act of Parliament; and every such order in council shall be published in the *London Gazette*; and all persons having the care of such cemeteries and burial grounds and places shall conform to and obey such regulation; and any such person who shall violate or wilfully neglect to observe any of such regulations shall, on summary conviction thereof before two justices of the peace, forfeit and pay any sum not exceeding ten pounds: Provided that no such representation shall be made in relation to any cemetery or burial ground until ten days previous notice in writing of the intention to make such representation shall have been given to the person or one of the persons having the control or care of such cemetery or burial ground (20 & 21 Vict. c. 81, s. 10).

Her Majesty may, by and with the advice of her privy council, from time to time, postpone the time appointed by any order in council for the discontinuance of burials, or otherwise vary any order in council made under the Burial Acts (whether the time thereby appointed for the discontinuance of burials thereunder or other operation of such order shall or shall not have arrived), as to Her Majesty, with such advice as aforesaid, may seem fit; and every order of Her Majesty in council made before the passing of the Burial Act, 1855, for varying any order previously made under previous Burial Acts or any of them, shall be deemed valid and effectual in law (18 & 19 Vict. c. 128, s. 1).

No such order in council as aforesaid shall be deemed to extend to any burial ground of Quakers, or Jews, used solely for the burial of the bodies of such persons, unless the same be expressly mentioned in such order; and nothing in the Burial Acts shall prevent the burial in any

such burial ground in which for the time being interment is not required to be discontinued of the bodies of such persons; and no such order in council as aforesaid shall be deemed to extend to any non-parochial burial ground being the property of any private person, unless the same be expressly mentioned in such order (16 & 17 Vict. c. 134, s. 2).

It shall not be lawful, after the time mentioned in any order in council under the Burial Acts for the discontinuance of burials, to bury the dead in any church, chapel, or churchyard, or burial place, or elsewhere within the parts to which such order extends, or in the burial grounds or places of burial (as the case may be) in which burials have by any such order been ordered to be discontinued, except as in the Acts or in such order excepted; and every person who shall, after such time as aforesaid, bury any body, or in anywise act or assist in the burial of any body, contrary to this enactment, shall be guilty of a misdemeanour (16 & 17 Vict. c. 134, s. 3).

If any person, after the time mentioned in any order in council under the Burial Acts for the discontinuance of burials, shall knowingly and wilfully bury any body or in anywise act or assist in the burial of any body in any church, chapel, churchyard, burial ground, or place of burial, or (as the case may be) within the limits in which burials have by such orders been ordered to be discontinued, in violation of the provisions of any such order, every person so offending shall, upon summary conviction before two justices of the peace, forfeit a sum not exceeding ten pounds (18 & 19 Vict. c. 128, s. 2).

It is provided that, notwithstanding any such order in council, where by virtue of any faculty legally granted, or by usage or otherwise, there is at the time

of the passing of the Burial Act, 1853, any right of interment in or under any church or chapel affected by such order, or in any vault of any such church or chapel, or of any churchyard or burial ground affected by such order, and where any exclusive right of interment in any such burial ground has been purchased or acquired before the passing of that Act, a secretary of state, from time to time, on application being made to him, and on being satisfied that the exercise of such right will not be injurious to health, may grant license for the exercise of such right during such time and subject to such conditions and restrictions as such secretary of state may think fit, but such license shall not prejudice or in anywise affect the authority of the ordinary, or of any other person who, if that Act had not been passed, might have prohibited or controlled interment under such right, nor dispense with any consent which would have been required, nor otherwise give to such right any greater force or effect than the same would have had if that Act had not been passed (16 & 17 Vict. c. 134, s. 4).

Where any burial ground in which interment is discontinued under the Burial Acts belongs to any parish other than that parish within which the same is locally situate, the incumbent and churchwardens of the parish to which such burial ground belongs may, with the consent of the vestry, or persons possessing the powers of vestry for ecclesiastical purposes of or in such parish, and of the bishop of the diocese, convey any chapel belonging to such parish, and situate in or attached to such burial ground, and the site thereof, to any persons named by the incumbent and churchwardens of the parish within which the same is situate, with the consent of the vestry, or persons possessing the powers of vestry of or in such

parish for ecclesiastical purposes, and of the said bishop, and upon such trusts for such last-mentioned parish, and subject to such conditions to be performed on behalf of such parish, and with such provision for the appointment of new trustees, as to the said bishop may seem proper; and such conveyance shall be effectual to pass all the estate and interest vested in any persons in trust or in behalf of the parish to which such chapel and the site thereof belong; and after the execution of such conveyance all obligation on such last-mentioned parish, or any trustees or others on behalf thereof, to repair such chapel, or to pay any stipend to the minister thereof, or otherwise in relation to or in connection with such chapel, shall cease (15 & 16 Vict. c. 85, s. 51).

The vestry of any parish in which any burial ground closed by order in council may be situate, and which does not belong to such parish, may, by resolution of the vestry at a meeting called for that purpose, purchase such burial ground, and from the time of such purchase such burial ground shall belong to such parish, and be subject to all the conditions affecting the burial grounds of the parish in which the same is situate (20 & 21 Vict. c. 81, s. 8).

In all cases in which unconsecrated land or buildings is or are vested in a trustee or trustees, either under any local Act or otherwise, for the purposes of a cemetery or burial ground, and burials in such cemetery or burial ground shall by order in council under the Burial Acts have been ordered to be wholly or partially discontinued, the trustee or trustees for the time being of such cemetery or burial ground may, from time to time, with the sanction of a secretary of state, let, demise, or lease any part or parts, in which no interment shall have taken place, of such land or buildings, and renew

or accept surrenders of any leases or tenancies thereof, and sell and absolutely dispose thereof for money in gross, or for any perpetual or other rent or rents to be made payable thereout, and by public auction or private contract, and sell all or any such perpetual or other rent or rents for money in gross and in manner aforesaid, and for any of the purposes aforesaid to make and execute any contracts, conveyances, leases, or other assurances, and to take any measures and make any arrangements which may be deemed expedient; and upon any such lease or sale as aforesaid a grant or conveyance by such trustee or trustees alone shall be a sufficient assurance of the property thereby purported to be leased or sold, and the receipts of such trustee or trustees shall be effectual discharges for the monies therein expressed to have been received, and shall absolve any lessee or purchaser from having to see to or being answerable for the application of such monies; and the net monies to be received by such trustee or trustees under any of the preceding powers shall be applied by them in discharge of any incumbrances affecting such cemetery or burial ground, and any debts which such trustee or trustees may have properly incurred in their fiduciary capacity; and any residue of such monies shall, where such land or buildings shall have been held in trust for any parish, be applied in such manner, for the benefit of such parish, as the vestry of such parish shall direct; but where such land or buildings shall have been held in trust for the benefit of private persons, such residue shall be divided by such trustee or trustees rateably among the cestuis que trusts; and such trustee or trustees may so apply any reserved fund in his or their hands (20 & 21 Vict. c. 81, s. 24).

In every case in which any order in council shall be

issued for the discontinuance of burials in any churchyard or burial ground, the burial board or churchwardens, as the case may be, shall maintain such churchyard or burial ground of any parish in decent order, and also do the necessary repair of the walls and other fences thereof, and the costs and expenses shall be repaid by the overseers, upon the certificate of the burial board or churchwardens, as the case may be, out of the rate made for the relief of the poor of the parish or place in which such churchyard or burial ground is situate, unless there shall be some other fund legally chargeable with such costs and expenses (18 & 19 Vict. c. 128, s. 18). This provision does not apply to private burial grounds (*R.* v. *Burial Board of St. John Westgate*, [1862] 31 L. J. Q. B. 15). The vestry as overseers must pay the amount for which a churchwarden has rendered himself liable even before he has actually paid it (*R.* v. *Vestry of St. Mary Islington*, [1890] 25 Q. B. D. 523; 59 L. J. Q. B. 462; 63 L. T. N. S. 226; 39 W. R. 10).

Where by an order in council it is ordered that no new burial ground shall be opened in any city or town or within any limits therein mentioned, without the previous approval of a secretary of state, no new burial ground or cemetery (parochial or non-parochial) shall be provided and used in such city or town or within such limits without such previous approval (16 & 17 Vict. c. 134, s. 6).

FORMATION OF BURIAL BOARDS.

The subject of the creation and duties, powers and liabilities of burial boards treated of in this section must be read as being subject to the extensive modifications and changes introduced by the Local Government Act,

1894. As, however, it is probable that for a considerable time burial boards will continue to exist, and even if their functions are discharged by the new local authorities created by the Local Government Act, 1894, the duties, powers, and liabilities of the new authorities under the Burial Acts will be practically the same, it has been considered desirable to retain this portion of the Introduction. The modifications will be found indicated in the notes to the various sections of the Burial Acts set out *infra*. Subject to such modifications, the principal provisions of the Burial Acts relating to the formation of burial boards and their duties are here given.

Upon the requisition in writing of ten or more ratepayers of any parish in which the place or places of burial shall appear to such ratepayers insufficient or dangerous to health (whether any order in council in relation to any burial ground in such parish has or has not been made), the churchwardens or other persons to whom it belongs to convene meetings of the vestry of such parish shall convene a meeting of the vestry, for the special purpose of determining whether a burial ground shall be provided under the Burial Acts for the parish; and public notice of such vestry meeting, and the place and hour of holding the same, and the special purpose thereof, shall be given in the usual manner in which notices of the meetings of the vestry are given, at least seven days before holding such vestry meeting; and if it be resolved by the vestry that a burial ground shall be provided under those Acts for the parish, a copy of such resolution, extracted from the minutes of the vestry, and signed by the chairman, shall be sent to a secretary of state (15 & 16 Vict. c. 85, s. 10; 16 & 17 Vict. c. 134, s. 7).

The churchwardens or other persons to whom it belongs to convene meetings of the vestry of any parish in which no burial board has been appointed, may at any time, at their discretion, without requisition of ratepayers for that purpose, convene a meeting of such vestry for the purpose of determining whether a burial ground shall be provided for the parish; and where any order in council has been made before the passing of the Burial Act, 1855, for discontinuing burials (wholly or subject to any exception or qualification) in any burial ground of any parish for which no burial board has been appointed, or notice has been given of the intention of the secretary of state to make a representation to Her Majesty in council that burials should be discontinued (wholly or subject to any exception or qualification) in any burial ground of any parish, the churchwardens or other persons to whom it belongs to convene meetings of vestry shall, with all convenient speed, after the passing of that Act, convene a meeting of the vestry for this purpose; and where at any time notice is given of the intention of the secretary of state to make a like representation in relation to a burial ground of any parish, such churchwardens or other persons as aforesaid shall forthwith convene a meeting of the vestry for the purpose aforesaid; and all the provisions of the Burial Acts as amended by the Burial Act, 1855, relating to and consequent upon vestry meetings convened upon such requisition as provided by the Burial Act, 1852, shall be applicable to vestry meetings convened under the Burial Act, 1855 (18 & 19 Vict. c. 128, s. 3).

In case a resolution to provide a burial ground be passed, the vestry shall appoint not less than three nor more than nine persons, being ratepayers of the

parish, to be the burial board of such parish (*a*), of whom one-third, or as nearly as may be one-third (to be determined among themselves), shall go out of office yearly at such time as shall be from time to time fixed by the vestry, but shall be eligible for immediate reappointment: Provided that the incumbent of the parish shall be eligible to be appointed and reappointed from time to time as one of the members of the said board, although not a ratepayer of the parish: Provided also that any member of the board may at any time resign his office, on giving notice in writing to the churchwardens or persons to whom it belongs to convene meetings of the vestry (15 & 16 Vict. c. 85, s. 11; 16 & 17 Vict. c. 134, s. 7).

Where a parish or place has been united with any other parish or place, parishes or places, for all or any ecclesiastical purposes, or where two or more parishes or places have heretofore had a church or a burial ground for their joint use, or where the inhabitants of several parishes or places have been accustomed to meet in one vestry for purposes common to such several parishes or places, the vestry or any meeting in the nature of a vestry of such several parishes or places in any of the cases aforesaid, and whether any one or more of such parishes or places do or do not separately maintain its own poor, may appoint a burial board, and from time to time supply vacancies therein, and exercise the same powers of authorisation, approval, and sanction in relation to such burial board, and such other powers as under the Burial Acts are vested in the vestry of a parish or place separately maintaining its own poor; and the burial board so appointed shall have all the

(*a*) In boroughs, the town council may become the burial board (see 17 & 18 Vict. c. 87, *infra*, p. 157).

powers for providing a burial ground for the common use of such several parishes or places, and for facilitating interments, and otherwise, as if such several parishes or places had been a parish separately maintaining its own poor; and the expenses of the burial board appointed under this provision shall be borne by the several parishes or places for which such board is appointed, and shall be apportioned among them by such burial board in proportion to the value of the property in such several parishes or places as rated to the relief of the poor; and the sums required by the burial board in respect of the portion of such expenses to be borne by any such parish or place shall be paid out of the rates for the relief of the poor in such parish or place, in like manner as if such burial board had been appointed for such parish or place alone (18 & 19 Vict. c. 128, s. 11).

Where any of the several parishes or places under the circumstances provided for in the Burial Act, 1855, separately maintains its own poor, or has a separate burial ground, it shall not be lawful for the vestry, or meeting in the nature of a vestry, of such several parishes or places, to appoint a burial board under that Act without the approval of a secretary of state; and in case it appear to the secretary of state that any such parish or place has a sufficient burial ground, or that otherwise it would not be expedient that the powers given by that Act should be exercised in relation to such parish or place, the secretary of state may direct that such parish or place shall be excepted from its operation, and thereupon the same shall be excepted accordingly; and the inhabitants of the remaining parish or parishes, place or places, may assemble in vestry, or in a meeting in the nature of a vestry, from

time to time, and in such vestry or meeting may proceed in like manner under the Burial Acts in all respects as if the inhabitants of such last-mentioned parish or parishes, place or places, exclusively had a vestry for their common purposes, and were wholly unconnected with the parish or place so excepted (20 & 21 Vict. c. 81, s. 9).

Where any parish or place has been divided into two or more parts or districts for all or any ecclesiastical purposes, and any one of such parts has a separate burial ground, the vestry or meeting in the nature of a vestry for such entire parish or place can only appoint a burial board with the approval of a secretary of state (23 & 24 Vict. c. 64, s. 4).

The vestry, or meeting in the nature of a vestry, of any parish, township, or other district not separately maintaining its own poor, which has heretofore had a separate burial ground, may appoint a burial board, and from time to time supply vacancies therein, and may exercise the same powers of authorisation, approval, and sanction in relation to such burial ground, and such other powers as under the Burial Acts are vested in the vestry of a parish separately maintaining its own poor; and the burial boards so appointed shall have all the powers for providing a burial ground and otherwise as if such parish, township, or other district had been a parish separately maintaining its own poor (18 & 19 Vict. c. 128, s. 12).

The vestry, or meeting in the nature of a vestry, of any parish, township, or other district not separately maintaining its own poor, and which has had no separate burial ground, may appoint a burial board; and such vestry or meeting, and the burial board appointed by it, shall exercise and have all the powers which they might

have exercised and had under the Burial Acts if such parish, township, or district had had a separate burial ground before the passing of the Burial Act, 1855: Provided that all the powers of any other vestry or meeting and burial board, if any, shall then cease and determine, so far as relates to such parish, new parish, township, or district (20 & 21 Vict. c. 81, s. 5).

The vestries of any parishes which shall have respectively resolved to provide burial grounds under the Burial Act, 1852, may concur in providing one burial ground for the common use of such parishes, in such manner, not inconsistent with the provisions of that Act, as they shall mutually agree, and may agree as to the proportions in which the expenses of such burial ground shall be borne by such parishes, and the proportion for each of such parishes of such expenses shall be chargeable upon and paid out of the monies to be raised for the relief of the poor of the same respective parish accordingly; and, according and subject to the terms which shall have been so agreed on, the burial boards appointed for such parishes respectively shall, for the purpose of providing and managing such one burial ground, and taking and holding land for the same, act as one joint burial board for all such parishes, and may have a joint office, clerk, and officers, and all the provisions of that Act shall apply to such joint burial board accordingly; and the accounts and vouchers of such board shall be examined and reported on by the auditors of each of such parishes; and the surplus money at the disposal as aforesaid of such board shall be paid to the overseers of such parishes respectively in the same proportions as those in which such parishes shall be liable to such expenses (15 & 16 Vict. c. 85, s. 23).

All acts authorised to be done by any burial board, with the approval, sanction, or authority of the vestry or vestries of the parish or parishes for which such board is constituted, may, where a joint burial board is constituted for more than two parishes, be done with the approval, sanction, or authority (as the case may require) of the vestries of the majority of such parishes (20 & 21 Vict. c. 81, s. 1).

Where the vestries of two or more parishes have agreed to provide one burial ground for the common use of such parishes, such vestries may, at any time before such burial ground has been provided, determine the union between such parishes under such agreement, and upon such union being so determined all the provisions of the Burial Acts shall be applicable with regard to such parishes and the respective burial boards thereof as if such union had not been formed, save that any expenses already properly incurred by the joint burial board for such parishes shall be defrayed as provided by those Acts (20 & 21 Vict. c. 81, s. 2).

"Parish" means every place having separate overseers of the poor, and separately maintaining its own poor (15 & 16 Vict. c. 85, s. 52).

No resolution or proceeding of any vestry, or meeting in the nature of a vestry, for the purposes of the Burial Acts, shall be void or voidable by reason of any defect or irregularity of or in notice of such vestry or meeting, or any other error in form in the calling of such vestry or meeting, or in the proceedings thereat, unless notice in writing of such defect or irregularity or error shall have been given at such vestry or meeting, or within seven days after the day of the holding thereof, to the churchwardens or other person to whom it belongs to call meetings of such vestry,

or such meeting in the nature of a vestry, who shall thereupon call another meeting for the purpose of considering the previous resolution or proceeding or the matter thereof; and no such resolution and proceeding made or taken at any such vestry, or meeting in the nature of a vestry, before the passing of the Burial Act, 1857, which shall not have been objected to by notice in writing to such churchwardens or persons as aforesaid, shall be deemed invalid by reason of any such defect, irregularity, or error (20 & 21 Vict. c. 81, s. 27).

"Churchwardens" shall mean also chapelwardens, or other persons discharging the duties of churchwardens: "vestry" shall mean the inhabitants of the parish lawfully assembled in vestry, or for any of the purposes for which vestries are holden, except in those parishes in which there is a select or other vestry elected under 59 Geo. III. c. 12, or 2 Will. IV. c. 60, or elected under the provisions of any local Act of Parliament for the government of any parish by vestries, in which parishes it shall mean such select or other vestry (15 & 16 Vict. c. 85, s. 52).

Nothing in the Burial Act, 1855, shall in anywise abridge, lessen, or defeat any power, right, or privilege of any local board of health being the burial board of a borough created or to exist under or by virtue of any local Act of Parliament (18 & 19 Vict. c. 128, s. 19).

Any local board of health acting as or created a board under or by virtue of the powers of any local Act of Parliament shall and may have and exercise all the powers, rights, and privileges which by the Burial Acts are or can or may be had, enjoyed, or exercised by any burial board therein named (18 & 19 Vict. c. 128, s. 20).

In case it appear to Her Majesty in council, upon the petition of the local board of health of any district established under the Public Health Act, or upon the petition of any commissioners elected by the ratepayers, and acting under or by virtue of the powers of any local Act of Parliament for the improvement of any town, parish, or borough, stating that the district of such local board of health or of such commissioners is co-extensive with a district for which it is proposed to provide a burial ground, and that no burial board has been appointed for such district, and that an order in council has been made for closing all or any of the burial grounds within the said district, Her Majesty, with the advice of her privy council, in case Her Majesty see fit so to do, may order that such local board shall be a burial board for the district of such local board, or that such commissioners shall be a burial board for the district of such commissioners, and thereupon such local board or such commissioners, as the case may be, shall be a burial board for such district accordingly; and the powers and provisions of the Burial Acts (except the provisions relating to the constitution or appointment and resignation of members of burial boards) shall extend to the district of such board, and to such board, or to the district of such commissioners, and to such commissioners, and to any burial ground and places for the reception of the bodies of the dead previously to interment which may be provided by such board or by such commissioners, in like manner as to any parish or parishes and the burial ground thereof, and any burial ground and any such places as aforesaid provided by such last-mentioned board; save that no approval, sanction, or authorisation of any vestry shall be re-

quisite. Notice of such petition, and of the time when it is to be taken into consideration by the privy council, shall be published in the *London Gazette*, and in one of the newspapers usually circulating in the district of such local board or of such commissioners, one month at least before such petition is so considered. This enactment shall not apply to any such district as aforesaid exclusively consisting of the whole or part of one corporate borough within the meaning of the Public Health Act, 1875 (20 & 21 Vict. c. 81, s. 4).

Every vacancy in any burial board shall be filled up by the vestry appointing the same within one month after such vacancy shall have happened, and immediately on the occurrence thereof the same shall be notified by the burial board to the churchwardens or other persons to whom it belongs to convene meetings of the vestry; and in case any such vestry shall neglect to fill up any such vacancy, the vacancy may be filled up by the burial board at any meeting thereof; and every person to be appointed to supply any such vacancy shall be a ratepayer of the parish for which the burial board is appointed; and every such board may act for any purpose, notwithstanding any vacancies therein (18 & 19 Vict. c. 128, s. 4).

PROCEEDINGS OF BURIAL BOARDS.

The board shall meet at their office, or some other convenient place previously publicly notified, and may meet at such other time as at any previous meetings shall be determined upon; and it shall be at all times competent for any two members of the board, by writing under their hands, to summon, with at least forty-eight hours' notice, the board for any special

purpose mentioned in such writing, and to meet at such time as shall be appointed therein (15 & 16 Vict. c. 85, s. 13).

At all meetings of the board any number not less than three members of such board shall be a sufficient number for transacting business, and for exercising all the powers of the board (15 & 16 Vict. c. 85, s. 14).

The board shall appoint, and may remove at pleasure, a clerk and such other officers and servants as shall be necessary for the business of the board and for the purposes of their burial ground, and, with the approval of the vestry, may appoint reasonable salaries, wages, and allowances for such clerk, officers, and servants, and, when necessary, may hire and rent a sufficient office for holding their meetings and transacting their business (15 & 16 Vict. c. 85, s. 15).

Entries of all proceedings of the board, with the names of the members who attend each meeting, shall be made in books to be provided and kept for that purpose, under the direction of the board, and shall be signed by the members present or any two of them; and all entries purporting to be so signed shall be received as evidence, without proof of any meeting of the board having been duly convened or held, or of the presence at any such meeting of the persons named in any such entry as being present thereat, or of such persons being members of the board, or of the signature of any person by whom any such entry purports to be signed, all which matters shall be presumed until the contrary be proved; and the board shall provide and keep books in which shall be entered true and regular accounts of all sums of money received and paid for or on account of the purposes of the Burial Acts in the parish, and of all liabilities incurred by them for such purposes,

and of the several purposes for which such sums of money are paid and such liabilities incurred (15 & 16 Vict. c. 85, s. 16).

All such books shall at all reasonable times be open to the examination of every member of such board, churchwarden, overseer, and ratepayer, without fee or reward, and they respectively may take copies of or extracts from such books without paying for the same; and in case the members of such board, or any of the officers or servants of such board having the custody of the said books, being thereunto reasonably requested, refuse to permit or do not permit any churchwarden, overseer, or ratepayer to examine the same, or take any such copies or extracts, every such member, officer, or servant so offending shall for every such offence upon summary conviction thereof before any justice of the peace, forfeit any sum not exceeding five pounds (15 & 16 Vict. c. 85, s. 17).

The vestry shall yearly appoint two persons, not being members of the board, to be auditors of the accounts of the board, and at such time in the month of March in every year as the vestry shall appoint, the board shall produce to the auditors their accounts, with sufficient vouchers for all monies received and paid, and the auditors shall examine such accounts and vouchers, and report thereon to the vestry (15 & 16 Vict. c. 85, s. 18).

The expenses incurred or to be incurred by the burial board of any parish in carrying the Burial Acts into execution shall be chargeable upon and paid out of the rates for the relief of the poor of such parish, the expenses to be so incurred for or on account of any parish in providing and laying out a burial ground under those Acts and building the necessary chapel or

chapels thereon not to exceed such sum as the vestry shall authorise to be expended for such purpose; and the overseers or other officers authorised to make and levy rates for the relief of the poor in any parish shall, upon receipt of a certificate under the hands of such number of members of the burial board as are authorised to exercise the powers of the board of the sums required from time to time for defraying any such expenses as aforesaid, pay such sums out of the rates for the relief of the poor as the board shall direct (15 & 16 Vict. c. 85, s. 19).

Where any district (whether a parish or township or other subdivision) not separately maintaining its own poor, but forming part of a parish maintaining its own poor, or of an incorporation or other union maintaining the poor of the places comprised therein, by means of a common rate, shall have a burial board, or shall form part of a place or union of places not co-extensive with the area rated for the relief of the poor, and having one burial board, such respective burial board may issue their certificate to the overseers of such parish, or the overseers or other persons authorised to make and collect or cause to be collected such common rate (as the case may be), for payment of the sums required for the expenses of such burial board, or, where such district not separately maintaining its own poor forms part only of the area of the burial board, of the sums required in respect of the portion of such expenses to be borne by such district, in like manner as if such district had been a parish separately maintaining its own poor, and such overseers or persons authorised as aforesaid, had been the overseers thereof; and such overseers or persons shall pay such sums as shall be required by such certificate, according to the directions

of such burial board, and shall levy such sums as may be required for such payments to the burial board by an addition to the parish rate or common rate, so far as the same affects the district in respect of which such payments are required, or by separate rates to be made from time to time on such district; and for levying such additions or separate rates as aforesaid such overseers or other persons shall have the powers, remedies, and privileges, and proceed in the same manner, as in the case of the rates for the relief of the poor; provided that any such rates may (notwithstanding any restriction in relation to the parish rate or common rate) be made and levied at such times as may be necessary to provide for the payments aforesaid (18 & 19 Vict. c. 128, s. 13).

"Overseers" shall mean also any persons authorised and required to make and collect, or cause to be collected, the rate for the relief of the poor of the parish, and acting instead of overseers of the poor (15 & 16 Vict. c. 85, s. 52).

If the vestry of any parish shall refuse or neglect to authorise the expenditure of such sums as the burial board of such parish shall have declared to be necessary for providing and laying out a burial ground, and building the necessary chapel or chapels thereon, such burial board may represent such refusal or neglect to a secretary of state; and in case it shall appear to the secretary of state, after inquiry into the circumstances of the case, that the burial board are unable to provide such burial ground, or to proceed effectually in the execution of their duties, by reason of such refusal or neglect, it shall be lawful for such secretary of state, by warrant under his hand, to authorise such burial board, without further authority sanction, or approval of or by

such vestry, to expend such sums of money for providing and laying out a burial ground, and building the necessary chapel or chapels thereon, and to borrow and charge such money for all or any of such purposes, and to enter into and make such contracts and purchases, and do such other acts as under sections nineteen, twenty, twenty-six, and forty-two of the Burial Act, 1852, might have been expended, borrowed, and charged, entered into, made, and done with the authority, approval, and sanction of such vestry, subject, nevertheless, to such limitation of amount or other limitation or restriction as such secretary of state may by his warrant prescribe; and all acts done in pursuance of such warrant shall be as valid and effectual as if the authority, approval, and sanction of such vestry had in every case been obtained (18 & 19 Vict. c. 128, s. 6).

The board may, with the sanction of the vestry and the approval of the commissioners of Her Majesty's treasury, borrow any money required for providing and laying out any burial ground under the Burial Acts, and building a chapel or chapels thereon, or any of such purposes, and charge the future poor rates of the parish with the payment of such money and interest thereon (15 & 16 Vict. c. 85, s. 20).

The commissioners for carrying into execution 14 & 15 Vict. c. 23, and any Act or Acts amending or continuing the same, may from time to time make to the burial board of any parish for the purposes of the Burial Acts any loan under the provisions of the first mentioned Act, or the Acts therein recited or referred to, upon security of the rates for the relief of the poor of the parish (15 & 16 Vict. c. 85, s. 21).

Although the Act 14 & 15 Vict. c. 23 has been re-

pealed by The Public Works Loans Act, 1875 (38 & 39 Vict. c. 89), the Public Works Loan Commissioners may now under the latter Act, s. 9, make loans to Burial Boards, and provisions as to repayment and interest are contained in ss. 10 and 11.

The clauses of the Commissioners Clauses Act, 1847, with respect to mortgages to be executed by the commissioners, are incorporated with the Burial Act, 1857, and apply to mortgages and other securities to be executed by burial boards; and for the purposes of that Act the expression "the commissioners" where used in the said clauses shall mean the burial board acting in the execution of the said clauses and the Burial Acts (20 & 21 Vict. c. 81, s. 19).

For the purpose of providing a sinking fund for paying off the principal money borrowed on mortgages granted under the Burial Acts, the burial board shall once in every year set aside, out of the monies charged by such mortgages, such sum as they think proper, being a sum equal to or exceeding one fiftieth part of the principal money so borrowed (20 & 21 Vict. c. 81, s. 20).

Any burial board or council of a borough may, for the purpose of raising money, instead of making mortgages under the Burial Acts, grant terminable annuities for a life or lives, or for any number of years not exceeding thirty years, to be paid out of the like monies as provided with regard to the monies secured by such mortgages (20 & 21 Vict. c. 81, s. 21).

The money raised for defraying such expenses, and the income arising from the burial ground provided for the parish, except fees payable to the incumbent, clerk, and sexton of the parish, and the other fees herein directed to be otherwise paid, shall be applied by the

board in or towards defraying the expenses of such board under the Burial Acts; and whenever, after repayment of all monies borrowed for the purposes of those Acts in or for any parish and the interest thereof, and after satisfying all the liabilities of the board with reference to the execution of those Acts in or for the parish, and providing such a balance as shall be deemed by the board sufficient to meet their probable liabilities during the then next year, there shall be at the time of holding the meeting of the vestry at which the yearly report of the auditors shall be produced any surplus money at the disposal of the board, they shall pay the same to the overseers, in aid of the rate for the relief of the poor of the parish (15 & 16 Vict. c. 85, s. 22).

"Incumbent" and "minister" shall, in respect of any fee made payable to an incumbent or minister under the Burial Acts, mean the clergyman who would have been entitled to the fee had the body been buried in the churchyard or burial ground of the parish from which it came, or in the burial ground of the ecclesiastical district in case such district has a burial ground at the passing of the Burial Act, 1852, and if any difference shall arise between two or more persons severally claiming to be the incumbent or minister under this provision, such difference shall be determined by the bishop of the diocese (15 & 16 Vict. c. 85, s. 52).

For the more easy execution of the purposes of the Burial Acts, the burial board of every parish appointed under those Acts shall be a body corporate, by the name of "The Burial Board for the Parish of , in the county of ," and by that name shall have perpetual succession and a common seal, and shall sue and be sued, and have power and authority (without any licence in mortmain) to take, purchase, and hold

land for the purposes of those Acts; and where the burial boards of two or more parishes act as and form one joint burial board for all such parishes for the purposes aforesaid, such joint board shall for such purposes only be a body corporate by the name of "The Burial Board for the Parishes of and , in the county of ," and by that name shall have like powers (15 & 16 Vict. c. 85, s. 24).

PROVISION OF NEW BURIAL GROUNDS.

The provision of new burial grounds is provided for in the Burial Acts which are set out in extenso, *infra*, pp. 92–251. The powers, &c. under these Acts of the burial boards created by them have been considerably affected by the Local Government Act, 1894. The effect of this Act upon burial boards and their powers is dealt with in a subsequent part of the work, which must be consulted to understand fully the present state of the law, and the powers of burial boards dealt with here must be considered subject to the alterations introduced by the Local Government Act, 1894.

Every burial board shall, with all convenient speed, proceed to provide a burial ground for the parish or parishes for which they are appointed to act, and to make arrangements for facilitating interments therein; and in providing such burial ground the board shall have reference to the convenience of access thereto from the parish or parishes for which the same is provided; and any such burial ground may be provided either within or without the limits of the parish, or all or any of the parishes, for which the same is provided (15 & 16 Vict. c. 85, s. 25).

But no ground not already used as or appropriated

for a cemetery shall be used for burials under the Burial Acts, within the distance of one hundred yards from any dwelling-house, without the consent in writing of the owner, lessee, and occupier of such dwelling-house (18 & 19 Vict. c. 128, s. 9).

In all cases in which any burial board shall provide a new burial ground under 15 & 16 Vict. c. 85, or 16 & 17 Vict. c. 134, that new burial ground shall be divided into consecrated and unconsecrated parts, in such proportions, and the unconsecrated part thereof shall be allotted in such manner and in such portions as may be sanctioned by a secretary of state (16 & 17 Vict. c. 134, s. 7).

If the ratepayers assembled at any vestry duly convened under the provisions of the Burial Acts shall, in pursuance of public notice duly given in that behalf, resolve unanimously that any new burial ground to be provided for their parish, under the provisions of the Burial Acts, shall be held and used in like manner and subject to the same laws and regulations in all respects as the existing burial ground or churchyard of the said parish, the land for such new burial ground may be conveyed and settled in accordance with such resolution, and in such case it shall not be necessary to set apart to remain unconsecrated any portion of the land so conveyed and settled; if at any time within ten years thereafter the vestry, duly convened under the provisions of the Burial Acts, in pursuance of public notice duly given in that behalf, should determine that an unconsecrated burial ground should be also provided for such parish, all the powers and provisions of the Burial Acts may be put in force and shall be applicable for providing such unconsecrated burial ground separately, in like manner as they might have been put in force and been applicable

for providing an ordinary burial ground for such parish (18 & 19 Vict. c. 128, s. 10).

Any burial board may, if they see fit, with the approval of a secretary of state, provide more than one burial ground, and may, if they see fit, with such approval, instead of setting apart a portion of any burial ground for the purpose of such portion being used as unconsecrated ground, provide separate and distinct grounds to be used respectively as consecrated and unconsecrated burial grounds: where before the passing of the Burial Act, 1857, any burial board has provided more than one burial ground, or has (instead of setting apart a portion of any burial ground for the purpose of being used as unconsecrated ground) provided separate and distinct grounds as consecrated and unconsecrated burial grounds, such burial board shall be deemed to have acted lawfully and in accordance with the Burial Acts (20 & 21 Vict. c. 81, s. 3).

Where a burial ground has been provided for any parish under the Church Building Acts, and the same has been consecrated, and any money expended in providing such burial ground has been borrowed on the security of the church rates, the incumbent of the parish, with the consent of the ordinary and the burial board of such parish, or of any borough or district in which such parish is wholly or in part comprised, may, by instrument in writing under the hands and seals of such incumbent and ordinary, and under the seal of the said burial board, declare that, in consideration of the payment of the debt by the said burial board, or of such sum as shall be mutually agreed upon, with the consent of the persons signified in writing under their hands, to whom two-thirds of such debt is due, the said burial ground shall be vested in and be

under the care and management of such burial board, and thereupon the same shall be vested in and be under the care and management of such board, and shall be subject to the provisions of the Burial Act, 1857, and previous Burial Acts, applicable to a consecrated burial ground or the consecrated part of any burial ground provided by any burial board, and any money borrowed as aforesaid, and remaining owing, and the interest due and to become due thereon, and all costs and expenses occasioned by the nonpayment thereof, or incurred in providing such burial ground, and then remaining unpaid, shall be charged on and paid out of such rates or fund as under those Acts would be chargeable with the expense of providing a burial ground by such board, and such declaration as aforesaid shall be registered in the registry of the diocese; and such board may, with the approval of the vestry, enlarge such burial ground, by the addition of ground to be used for burials otherwise than according to the rites of the Church of England, and to be used subject to the provisions of those Acts in respect to the unconsecrated portions of burial grounds (20 & 21 Vict. c. 81, s. 7).

Where any cemetery in which burials have, by order in council, under the Burial Acts, been ordered to be discontinued, is adjoining or near to any land appropriated or about to be appropriated by any burial board for the purposes of a burial ground, and appears to such board eligible for the purpose of appropriating or erecting buildings for or making approaches to such burial ground, such board may, with the approval of the vestry or respective vestries, purchase such cemetery; and where in the like case any cemetery has been so purchased before the passing of the Burial Act, 1857,

the purchase thereof shall be deemed to have been lawful: notwithstanding such purchase, such order in council shall remain in full force and effect in relation to such cemetery (20 & 21 Vict. c. 81, s. 26).

PURCHASE AND SETTLEMENT OF LANDS.

For the providing such burial ground the burial board may, with the approval of the vestry or vestries of the parish or respective parishes, contract for and purchase any lands for the purpose of forming a burial ground, or for making additions to any burial ground to be formed or purchased under the Burial Acts, as such board may think fit, or purchase from any company or persons entitled thereto any cemetery or cemeteries, or part or parts thereof, subject to the rights in vaults and graves, and other subsisting rights, which may have been previously granted therein: but such board, in lieu of providing any such burial ground, may contract with any such company or persons entitled as aforesaid for the interment in such cemetery or cemeteries, and either in any allotted part of such cemetery or cemeteries or otherwise, and upon such terms as the burial board may think fit, of the bodies of persons who would have had rights of interment in the burial grounds of such parish or respective parishes (15 & 16 Vict. c. 85, s. 26).

"The Lands Clauses Consolidation Act, 1845," except the provisions of that Act "with respect to the purchase and taking of lands otherwise than by agreement," "with respect to the recovery of forfeitures, penalties, and costs," "with respect to lands acquired by the promoters of the undertaking under the provisions of 'The Lands Clauses Consolidation Act, 1845,'

or the special Act, or any Act incorporated therewith, but which shall not be required for the purposes thereof," and "with respect to the provision to be made for affording access to the special Act by all parties interested," is incorporated with the Burial Act, 1852; and for the purposes of that Act the expression "the promoters of the undertaking," wherever used in the said Lands Clauses Consolidation Act, shall mean the burial board (15 & 16 Vict. c. 85, s. 27).

Any such board may, with the approval of the vestry, sell and dispose of any lands purchased by them under the Burial Acts, or any part thereof, in which no interment shall have taken place, and which it may appear to the board may be properly sold or disposed of; and for completing and carrying any such sale into effect such board may make and execute a conveyance of the lands sold and disposed of as aforesaid unto the purchaser, or as he shall direct; and such conveyance shall be under the hands of at least two of the members of the board, and under the seal of the board; and the word "grant" in such conveyance shall have the same operation as by the Lands Clauses Consolidation Act, 1845, is given to the same word in a conveyance of lands made by the promoters of the undertaking; and a receipt under the hands of two of the members of the board shall be a sufficient discharge to the purchaser of any such lands for the purchase-money in such receipt expressed to be received; and the money to arise from such sale shall be applied to such of the purposes of the Burial Acts as the board shall think fit (15 & 16 Vict. c. 85, s. 28).

Any burial board may, with the sanction of a secretary of state, and subject to regulations approved of by him, let any land purchased by and vested in

them under the Burial Act, 1855, or previous Burial Acts, and which has not been consecrated, and in which no body has been at any time interred, and which is not for the time being required for the purposes of a burial ground, in such manner and on such terms as such board may see fit, but so nevertheless that power shall be reserved to such board to resume any such land which may be required for the purposes aforesaid, upon giving six months' notice (18 & 19 Vict. c. 128, s. 17).

Any burial board under the Burial Act, 1852, with the approval of the vestry and of the guardians of the poor of the parish (if any), and of the poor law board, may from time to time appropriate for the purposes of a burial ground for such parish, either alone or jointly with any other parish or parishes, any land vested in such guardians, or in the churchwardens, or in the churchwardens and overseers of the parish, or in any feoffees, trustees, or others, for the general benefit of the parish, or for any specific charity: where any land so taken and appropriated shall be subject to any charitable use, such lands shall be taken on such conditions only as the Court of Chancery in the exercise of its jurisdiction over charitable trusts shall appoint and direct (15 & 16 Vict. c. 85, s. 29).

CHAPELS AND GROUNDS.

Any burial board may lay out and embellish any burial ground provided by such board in such manner as may be fitting and proper, and build on any land to be purchased or appropriated for a burial ground under the Burial Acts, and according to a plan to be approved of by the bishop of the diocese, a chapel for the performance

of the burial service according to the rites of the Church of England; and such burial ground may be consecrated by the bishop of the diocese, when the same shall appear to him to be in a fit and proper condition, for the purposes of interment according to the rites of the Church: Provided, that in providing any burial ground such board shall set apart a portion thereof which shall not be so consecrated as aforesaid, and may build thereon a suitable chapel or chapels for the performance of funeral service (15 & 16 Vict. c. 85, s. 30).

It shall not be necessary to erect or maintain any wall or fence between the consecrated and the unconsecrated portions of any burial ground provided under the Burial Acts: Provided that in the case of any burial ground where there shall be no such wall or fence, it shall be the duty of the burial board having the care of such burial ground to place, and from time to time to repair and renew, such boundary marks of stone or iron as may be sufficient to show the boundaries of such consecrated and unconsecrated portions respectively (20 & 21 Vict. c. 81, s. 11).

If upon the application in writing by any burial board to the bishop of the diocese for the consecration of a burial ground, declared in such writing to be in a fit and proper condition for the purpose of interment according to the rites of the Church of England, the bishop shall refuse to consecrate the same, such burial board may appeal from such refusal to the archbishop of the province, who shall decide the matter in dispute; and if the archbishop shall decide that the burial ground is not in a fit and proper condition as aforesaid, then the board shall be bound to put the ground in a fit and proper condition; and if the archbishop shall

decide that the burial ground is in a fit and proper condition as aforesaid, and ought to be consecrated, such decision shall be communicated in writing by the archbishop to the bishop aforesaid; and if after such communication the bishop shall not within one calendar month consecrate the burial ground, the archbishop shall, under his hand and seal, license the same for the interment of bodies according to the rites of the Church of England, and the licence of the archbishop so granted as aforesaid shall, until such burial ground be consecrated, operate to make lawful the use of the same as if it had been consecrated (20 & 21 Vict. c. 81, s. 12).

When any burial board shall by virtue of the Burial Act, 1852, s. 30, build on any burial ground provided by such board a chapel for the performance of the burial service according to the rites of the Church of England, they shall also build, on the portion of such ground set apart for burials otherwise than according to the rites of the Church of England, such chapel accommodation for the performance of the burial service by persons not being members of that Church as may be approved of by a secretary of state (16 & 17 Vict. c. 134, s. 7).

Doubts having arisen whether in all cases in which any burial board had built in any burial ground provided by such board a chapel for the burial service according to the rites of the Church of England, such burial board was not also bound by law to build a chapel or chapels upon the unconsecrated part of such burial ground for the performance of burial service for persons not being members of that Church, it was enacted, that in any such case, where it shall appear to a secretary of state, upon the representation of a

majority of the vestry of any parish, consisting of not less than three-fourths of the members of the same, that the building of a chapel upon the unconsecrated part of any such burial ground for the use of persons not being members of that Church is undesirable and unnecessary, the secretary of state, if he shall think fit, may signify his opinion to that effect to the burial board of the parish, and the said burial board shall thereupon be relieved from all obligation to build the same: Provided that the secretary of state shall not signify his opinion unless it be shown to his satisfaction that notice of the intention to propose to such vestry to make such representation was given in manner required by law for notices of vestry meetings, and of the special purposes thereof (18 & 19 Vict. c. 128, s. 14).

In any case where the burial boards appointed under the Burial Acts, 1852 and 1853, for any two parishes, shall provide separate burial grounds for such parishes respectively, and such burial grounds shall adjoin each other, such burial boards may concur in building, either on one of the said burial grounds or partly on one of such grounds and partly on the other, such chapels as are authorised to be built by those Acts, and such chapels when erected shall be used in common by both of such parishes, and be deemed and taken to be the chapels of and belonging to each of such burial grounds respectively, in such manner, consistent with the provisions of those Acts, as the said burial boards shall mutually agree upon; and the said burial boards may agree as to the proportions in which the expenses of erecting such chapel accommodation shall be borne by each of the said boards respectively; and the proportion for each of such parishes of such expenses shall be chargeable upon and paid in the same manner

as the costs of providing burial grounds under those Acts; and where any burial board shall provide a burial ground, and cause chapels to be built thereon, pursuant to those Acts, such burial board may, with the sanction of a secretary of state, contract with any other burial board whose burial ground shall adjoin the one on which such chapels shall so have been built, for the use of such chapels, in such manner and on such terms as such respective burial boards shall mutually agree, and during the existence of any such agreement such chapels shall be deemed and taken to be the chapels of and belonging to each of such burial grounds respectively (18 & 19 Vict. c. 128, s. 16).

Any burial board may from time to time enter into any contract with any persons or companies for building any chapel or chapels as aforesaid, and inclosing, laying out, and embellishing any burial ground, and for furnishing any materials and things, and for executing and doing any other works and things necessary for the purposes of the Burial Act, 1852, which contracts respectively shall specify the several works and things to be executed, furnished, and done, and the prices to be paid for the same, and the times when the works and things are to be executed, furnished, and done, and the penalties to be suffered in cases of non-performance; and all such contracts or true copies thereof, shall be entered in books to be kept for that purpose: Provided that no contract above the value or sum of one hundred pounds shall be entered into by such burial board for the purposes of that Act unless previous to the making thereof fourteen days notice shall be given in one or more of the public newspapers published in the county or counties in which the parish or respective parishes shall be situated, expressing the intention of entering

into such contract, in order that any person willing to undertake the same may make proposals for that purpose, to be offered to the burial board at a certain time and place in such notice to be mentioned, but it shall not be incumbent on the burial board to contract with the person offering the lowest price (15 & 16 Vict. c. 85, s. 31).

THE LOCAL GOVERNMENT ACT, 1894.

The provisions of the Burial Acts, 1852 to 1885, which are set out *infra*, pp. 92–251, as to the formation of burial boards and the powers of such boards, have been considerably affected by the Local Government Act, 1894 (56 & 57 Vict. c. 73). By that Act a parish meeting consisting of parochial electors is instituted in every rural parish, and every rural parish with a population of three hundred or upwards has a parish council (s. 1).

If the parish meeting of a parish containing a population of one hundred or upwards so resolve, the County Council shall for such parish order a parish council to be erected, and the County Council may, for a parish with a population of less than one hundred, with the consent of the parish meeting, establish a parish council for the parish.

In every county district (which outside London may be described as the urban and rural sanitary districts under the Public Health Act, 1875) there is created a district council. In urban districts which are boroughs the municipal council is the district council (ss. 21 and 23). The constitution of Urban District Councils other than boroughs is provided for by s. 23, and that of Rural District Councils by s. 24.

Under s. 7 of the Local Government Act, 1894,

the Burial Acts (1852 to 1885) are classed as "Adoptive Acts," and by the same section in every rural parish the parish meeting has exclusively the power of adopting the Adoptive Acts. And for the purposes of that Act the passing of a resolution to provide a burial board under the Burial Acts, 1852 to 1885, will be deemed an adoption of the Burial Acts. When any of the Adoptive Acts is adopted for the whole or part of a rural parish, and the parish has a parish council, the parish council will be the authority for the execution of the Acts.

Under s. 6 (1) of the Local Government Act, 1894, the parish council of a rural parish has transferred to it: (a) the powers, duties, and liabilities of the vestry of the parish (i) except in so far as they relate to the affairs of the Church or to ecclesiastical charities, and (ii) powers, &c. by that Act transferred to other authorities; (b) the powers, duties, and liabilities of the churchwardens of the parish except so far as they relate to the affairs of the Church or to charities or are powers and duties of overseers. This transfer includes the obligations of churchwardens with respect to maintaining and repairing closed churchyards where the expenses of such repair and maintenance are repayable out of the poor rate under the Burial Act, 1855; (c) the powers, duties, and liabilities of the overseers or of the churchwardens and overseers of the parish with respect to the holding or management of parish property.

By s. 62 of the Local Government Act, 1894, where there is in any urban district or part of an urban district any authority constituted under any of the "Adoptive Acts," the council of that district may resolve that the powers, duties, property, debts, and liabilities of that authority shall be transferred to the council as from the

date specified in the resolution, and upon that date the same shall be transferred accordingly, and the authority shall cease to exist, and the council shall be the successors of that authority.

Under s. 53, (1) where any of the Adoptive Acts is in force in part only of a rural parish, the existing authority under the Acts or the parish meeting for that part may transfer the powers, duties, and liabilities of the authority to the parish council, subject to any conditions with respect to the execution thereof by means of a committee as to the authority or parish meeting may seem fit, and any such conditions may be altered by the parish meeting. (2) If the area under any authority under any of the Adoptive Acts will not be comprised within one rural parish, the powers and duties of the authority shall be transferred to the parish councils of the rural parishes wholly or partly comprised in that area, or if the area is partly comprised in an urban district, to those parish councils and the district council of the urban district, and shall, until other provision is made under the Local Government Act, 1894, be exercised by a joint committee appointed by the councils. Where any such parish has not a parish council, the parish meeting shall, for the purposes of this provision, be substituted for the parish council. (3) Provision is made as to the property of the authority.

By s. 81 of the Local Government Act, 1894, where the powers and duties of an authority other than justices are transferred by the Act to any parish or district council, the officers of such authority shall become the officers of that council and hold office by the same tenure and upon the same terms and conditions as heretofore, and while performing the same duties shall receive not less salary or remuneration than heretofore.

REGISTRATION OF BURIALS.

By the Act for Preserving Parish Registers, 1812 (52 Geo. III. c. 146), which, according to the preamble to the Act, was passed to facilitate the proof of pedigrees of persons claiming to be entitled to real or personal estate, it was enacted that registers of burials solemnised according to the rites of the Church of England within parishes in England, whether subject to the ordinary or peculiar or other jurisdiction, shall be made and kept by the rector, vicar, or officiating minister of every parish, where ceremonies of baptism, marriage, and burial have been usually and may according to law be performed, in books of parchment or good and durable paper, to be provided by Her Majesty's printer at the expense of the respective parishes. The entries have to be numbered progressively and to be according to Schedule C of the Act, and have to be made as soon as possible after the burial, and to contain the particulars described in the said schedule, and to be signed by the rector, vicar, or officiating minister.

If the burial is performed in any other place than the parish church or churchyard of a parish, or the chapel or chapel yard of a chapelry providing its own distinct registers, and the burial is performed by a minister, not being the rector, vicar, minister, or curate of the parish or chapelry, the minister performing the ceremony of burial shall, on the same or next day, transmit to the rector, vicar, or other minister of such parish or chapelry or his curate, a certificate of the burial in the form in Schedule D to the Act; and the rector, vicar, minister, or curate shall enter the burial in the register kept by

him, adding to the entry the words, "According to the certificate of the Rev. transmitted to me on the day of ." Burial grounds provided under the Burial Acts are, however, exempt from this provision (see s. 16 of the Burial Act, 1857).

The registers are deemed to belong to the parish or chapelry, and are to be kept in the custody of the rector or vicar, &c. Within two months of the end of each year copies of the entries of burials made during the year shall be made, verified, and attested, and sent annually to the registrar of the diocese before the first day of June in each year. The registrar of every diocese shall make a report to the bishop whether the returns have been sent to them. The registrar of the diocese is to keep such returns safely and preserve them from damage. The provisions of this Act extend to cathedral or collegiate churches and chapels of colleges or hospitals, and the burying grounds belonging to them.

By 11 Geo. IV. and 1 Will. IV. c. 66, s. 20, any person inserting a false entry or forging or altering an entry in a register of burials, or destroying such register, was declared guilty of felony, and on conviction was liable to imprisonment. This provision was repealed by 24 & 25 Vict. c. 95, s. 1, and the provisions of the Forgery Act, 1861 (24 & 25 Vict. c. 98), were substituted, but the power given by s. 21 of the 11 Geo. IV. and 1 Will. IV. c. 66, to rectors, &c. to correct accidental errors, was left in full force. By the Registration of Burials Act, 1864 (27 & 28 Vict. c. 97), all burials in any burial ground are required to be registered in register books to be provided by the company, body, or persons to whom the same belongs, and to be kept as registers are required to be kept by rectors, &c. of parishes or ecclesiastical

districts. An officer is to be appointed by the company or body or person owning the burial ground to keep the registers, who is to send verified copies to the registrar of the diocese in which the burial ground is situate. These register books are made evidence in all courts of the burials entered in the registers.

By s. 17 of the Births and Deaths Registration Act, 1874 (37 & 38 Vict. c. 88), which was repealed in part and re-enacted by the Coroner's Act, 1887, s. 18 (b), a coroner upon holding an inquest upon any body may, if he thinks fit, authorise the body to be buried before verdict or before registry of the death, and shall give such order to the relative of the deceased or other person who causes the body to be buried, or to the undertaker or other person having charge of the funeral, and except upon holding an inquest no order, warrant, or other document for the burial of any body shall be given by the coroner. The registrar upon registering any death shall give without fee to the person giving information of the death, or giving the requisition or notice provided by the Act, or to the undertaker or person having charge of the funeral of the deceased, a certificate under his hand that he has registered or received notice of the death as the case may be.

The order of the coroner and the certificate of the registrar shall be delivered to the person who buries or performs any funeral or religious service for the burial of the body of the deceased. The person who buries or performs any funeral or religious service for the burial of any dead body as to which no order or certificate is delivered shall within seven days after the burial give notice thereof in writing to the registrar.

By s. 11 of the Burial Laws Amendment Act, 1880, the order or certificate is in the case of burials under

that Act to be given to the person responsible for the burial.

By the Stamp Act, 1891 (54 & 55 Vict. c. 39), s. 64, the stamp duty of one penny upon a certified copy or extract of or from any register of deaths or burials is to be paid by the person requiring the copy or extract (except where free from duty, *e.g.* where the person giving the said copy is not entitled to any fee). The duty may be denoted by an adhesive stamp to be cancelled by the person giving the copy or extract.

All burials within any burial ground provided under the Burial Acts shall be registered in a register book to be provided by the burial board providing such ground (or, where the same is provided by the Commissioners of Sewers of the city of London, then by such commissioners), and kept for that purpose according to the laws in force by which registers are required to be kept by the rectors, vicars, or curates of parishes or ecclesiastical districts in England; and such register book shall be so kept by some officer appointed by the said board or commissioners to that duty; and in such register books shall be distinguished in what parts of the burial ground, and where the whole of such burial ground is not consecrated for interments according to the rites of the Church of England, whether in the portion so consecrated or in the portion not so consecrated, the several bodies (the burials of which are entered in such register books) are buried; and in case such burial ground has been provided for more than one parish, such register shall be kept or indexed so as to facilitate searches for entries in such books in respect of bodies from the several parishes; and such register books, or copies or extracts therefrom, shall be received in all courts as evidence of the burials entered therein,

and copies or transcripts of such register books, verified and signed by such officer as aforesaid, shall be from time to time sent to the registrar of the diocese, to be kept with the copies of the other register books of the parishes within such diocese; and such register books, so far as respects searches to be made therein and copies and extracts to be taken therefrom, shall be subject to the same regulations as are provided by the Births and Deaths Registration Act, 1837, so far as such regulations relate to register books of burials kept by any rector, vicar, or curate (16 & 17 Vict. c. 134, s. 8).

Every person who shall wilfully destroy or injure, or cause to be destroyed or injured, any register book of burials, kept according to the provisions of the Burial Acts, or any part or certified copy of any part of such register, or shall falsely make or counterfeit, or cause to be falsely made or counterfeited, any part of any such register or certified copy thereof, or shall wilfully insert or cause to be inserted in any registry book or certified copy thereof, any false entry of any burial, or shall wilfully give any false certificate, or shall certify any writing to be a copy or extract of any such register book, knowing the same to be false in any part thereof, or shall forge or counterfeit the seal of any burial board, shall be guilty of felony (20 & 21 Vict. c. 81, s. 15).

By 52 Geo. III. c. 146, s. 4, it is provided, that whenever the ceremony of burial shall be performed in any other place than the parish church or churchyard of any parish, or the chapel or chapel yard of any chapelry providing its own distinct registers, and such ceremony shall be performed by any minister not being the rector, vicar, minister, or curate of such parish or chapelry, the

minister who shall perform such ceremony of burial, shall on the same or on the next day transmit to the rector, vicar, or other minister of such parish or chapelry, or his curate, a certificate of such burial, and the rector, vicar, minister, or curate of such parish or chapelry shall thereupon enter such burial according to such certificate in the book kept pursuant to that Act for such purpose: and distinct registers are by law required to be kept in the burial grounds provided under the Burial Acts. But the provisions of 52 Geo. III. c. 146 do not apply in any case where the ceremony of burial is performed in a burial ground provided or to be provided under the Burial Acts (20 & 21 Vict. c. 81, s. 16).

RATING AND PROTECTION OF NEW BURIAL GROUNDS.

No land already or to be hereafter purchased or acquired, under the provisions of the Burial Acts, for the purpose of a burial ground (with or without any building erected or to be erected thereon), shall while used for such purposes be assessed to any county, parochial, or other local rates at a higher value or more improved rent than the value or rent at which the same was assessed at the time of such purchase or acquisition (18 & 19 Vict. c. 128, s. 15).[1]

The provisions of "The Cemeteries Clauses Act, 1847," with respect to the protection of the cemetery, shall be incorporated with the Burial Acts, and be applicable to any burial ground provided under them (15 & 16 Vict. c. 85, s. 40).

THE BURIAL ACTS.

15 & 16 Vict. c. 85.

15 & 16 VICT. C. 85.

An Act to amend the laws concerning the Burial of the Dead in the Metropolis (*a*). [1st July, 1852.]

13 & 14 Vict. c. 52.

WHEREAS it is expedient to repeal "The Metropolitan Interments Act, 1850," *and to make such other provision as hereinafter mentioned in relation to interments in and near the metropolis: be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:*

13 & 14 Vict. c. 52, repealed, and Her Majesty may continue additional member of board therein authorised.

I. *The said Act shall be repealed: Provided always, that it shall be lawful for Her Majesty to continue during the continuance of the General Board of Health the appointment of the additional member of such board authorised by the said Act, and the salary of such member, fixed as in the said Act mentioned, shall be paid as by section seven of the Public Health Act,* 1848, *is directed concerning the salaries therein mentioned.*

This proviso was repealed by the General Board of Health Continuance Act of 1854; the preamble and s. 1 were respectively repealed by the Statute Law Revision Act, 1875, and the Statute Law Revision Act, 1892.

(*a*) The Burial Acts passed from 1852 to 1885 inclusive, are to be read together as one Act, and each may be referred to as the Burial Act of the year in which it was passed. See the Short Titles Act, 1896 (59 & 60 Vict. c. 14).

15 & 16 Vict. c. 85.

On representation of secretary of state, Her Majesty in council may order discontinuance of burials in any part of the metropolis.

II. In case it appear to Her Majesty in council, upon the representation of one of Her Majesty's principal secretaries of state, that for the protection of the public health burials in any part or parts of the metropolis, or in any burial grounds or places of burial in the metropolis, should be wholly discontinued, or should be discontinued subject to any exception or qualification, it shall be lawful for Her Majesty, by and with the advice of her privy council, to order that after a time mentioned in the order burials in such part or parts of the metropolis or in such burial grounds or places of burial shall be discontinued wholly, or subject to any exceptions or qualifications mentioned in such order, and so from time to time as circumstances may require: provided that notice of such representation, and of the time when it shall please Her Majesty to order the same to be taken into consideration by the privy council, shall be published in the *London Gazette*, and shall be affixed on the doors of the churches or chapels of the parishes in which any burial grounds or places of burial affected by such representation shall be situate, or on some other conspicuous places within the part or parts of the metropolis affected by such representation, one calendar month, *or where any order made under "The Nuisances Removal and Diseases Prevention Act, 1848," directing the provisions of that Act for the prevention of epidemic, endemic, and contagious diseases to be put in force, is in force within such part or parts, then seven days* at the least before such representation is so considered: Provided always, that no such representation shall be made in relation to the burial ground of any parish until ten days' previous notice of the intention to make such representation

15 & 16 Vict. c. 85. shall have been given to the incumbent and the vestry clerk of such parish.

The words in italics are repealed by the Statute Law Revision Act, 1875.

The metropolis is defined by s. 53, *infra*, p. 144. The provisions of this Act contained in ss. 10 to 42 both inclusive, and in ss. 44, 50, 51, and 52, are extended and applied to all parishes. See 16 & 17 Vict. c. 134, s. 7.

On notice of the secretary of state that he intends to make the representation, it is the duty of the churchwardens, or the persons to whom it belongs, to convene meetings of the vestry of any parish where no burial board has been appointed to convene with all convenient speed a meeting of the vestry to determine whether a burial ground shall be provided for the parish (18 & 19 Vict. c. 128, s. 3).

By 18 & 19 Vict. c. 128, s. 18, *post*, p. 185, the duty of maintaining and keeping in order closed churchyards and burial grounds is imposed upon the churchwardens and burial board respectively, and the overseers are to repay them the costs and expenses out of the rate for the relief of the poor.

As to the property in a closed churchyard or burial ground, and the profits of monies paid as compensation if the churchyard or burial ground is purchased for other purposes, see *In re St. Pancras Burial Ground*, [1866] L. R. 3 Eq. 173; 36 L. J. Ch. 52; *Campbell* v. *Mayor of Liverpool*, [1870] L. R. 9 Eq. 579; 21 L. T. N. S. 814; 18 W. R. 422; *Ex parte Rector of Liverpool*, [1870] L. R. 11 Eq. 15; 40 L. J. Ch. 65; *Ex parte Rector of St. Martin's, Birmingham*, [1870] L. R. 11 Eq. 23; 40 L. J. Ch. 69; 23 L. T. N. S. 575; *Stebbing* v. *The Metropolitan Board of Works*, [1870] L. R. 6 Q. B. 37; 40 L. J. Q. B. 1; 23 L. T. N. S. 530. The principle deducible from these cases is that, if burial grounds be closed under the Burial Acts, their user as burial grounds is merely forbidden, and the property in them remains the same. Hence, if the land be purchased for other purposes, the interest on any capital sum thereby obtained is payable to the persons who would have been entitled to the fees or other profits arising from burials. The sum payable for compensation is not, however, to be assessed as though the land were secularised, but according to its value as a closed burial ground.

15 & 16 Vict. c. 85.

An order under the Burial Acts for closing a churchyard is not to include any portion reserved to the donor under the Consecration of Churchyards Act, 1867, but it may be closed under a separate order founded on a special report (30 & 31 Vict. c. 133, s. 11, *infra*, p. 397).

As to the maintenance of closed burial grounds see 18 & 19 Vict. c. 128, s. 18, *infra*, p. 185, and as to vaults see 20 & 21 Vict. c. 81, s. 23, *infra*, p. 220, and 22 Vict. c. 1, s. 1, *infra*, p. 227. No buildings may, with certain exceptions, be erected on disused burial grounds (the Disused Burial Grounds Act, 1884, 47 & 48 Vict. c. 72, *infra*, p. 417, as amended by the Open Spaces Act, 1887, 50 & 51 Vict. c. 32, s. 4, *infra*, p. 423).

By the Public Health Act, 1875 (38 & 39 Vict. c. 55, s. 343, Sched. V., part iii.), re-enacting the Public Health Act, 1848 (11 & 12 Vict. c. 63, s. 83), no vault or grave shall be constructed or made within the walls of or underneath any church or other place of public worship built in any urban district after August 31st, 1848, under a penalty of 50*l.* recoverable by any person.

Order not to extend to burial grounds of Quakers or Jews unless expressly included.

III. No such order in council as aforesaid shall be deemed to extend to any burial ground of the people called Quakers, or of the persons of the Jewish persuasion, used solely for the burial of the bodies of such people and persons respectively, unless the same be expressly mentioned in such order; and nothing in this Act shall prevent the burial in any such burial ground in which for the time being interment is not required to be discontinued of the bodies of such people and persons respectively; and no such order in council as aforesaid shall be deemed to extend to any non-parochial burial ground being the property of any private person, unless the same be expressly mentioned in such order.

Burial not to take place after order in council for

IV. It shall not be lawful, after the time mentioned in any such order in council for the discontinuance of burials, to bury the dead in any church, chapel,

15 & 16 Vict. c. 85. discontinuance.

churchyard, or burial place, or elsewhere, within the part or parts of the metropolis or in the burial grounds or places of burial (as the case may be) in which burials have by any such order been ordered to be discontinued, except as in this Act or in such order excepted; and every person who shall, after such time as aforesaid, bury any body, or in anywise act or assist in the burial of any body, contrary to this enactment, shall be guilty of a misdemeanour.

This section is extended to parishes outside the metropolis by s. 7 of 16 & 17 Vict. c. 134, *post*, p. 153. The exceptions referred to in this section are those contained in ss. 6, 7, and 8, *infra*, pp. 97–99.

By 18 & 19 Vict. c. 128, s. 2, a penalty of 10*l.* recoverable upon summary conviction is imposed on any person burying contrary to the provision of an order in council closing a church, chapel, churchyard, or burial ground. This punishment is alternative to that provided in this section. See *R.* v. *Manchester*, [1855] 5 E. & B. 702; *sub nom. R.* v. *Maude*, 25 L. J. M. C. 45.

See as to burials in urban districts in churches built after August 31st, 1848, the Public Health Act, 1875, cited *supra* in notes to s. 2.

Restriction as to place of burial of inhabitants of parishes the burial grounds whereof are closed.

V. After the time from which burials in any place of burial of any parish are required under this Act to be discontinued, the body of any parishioner or inhabitant of such parish shall not be buried in any burial ground within the metropolis belonging to any other parish within the metropolis, save where the body of any of the family or relatives of such parishioner or inhabitant has been interred in such burial ground, and the relatives or other persons having the care and direction of the funeral signify a desire that on that account the body of such parishioner or inhabitant should be there interred (such burial ground not being a burial ground

in which burials have been ordered to be discontinued under this Act), and save as herein otherwise provided: and every person having the care or control of any burial ground who knowingly authorises or permits any burial therein contrary to this enactment shall be guilty of a misdemeanour. 15 & 16 Vict. c. 85.

VI. Provided always, that notwithstanding any such order in council, where by virtue of any faculty legally granted, or by usage or otherwise, there is at the time of the passing of this Act any right of interment in or under any church or chapel affected by such order, or in any vault of any such church or chapel, or of any churchyard or burial ground affected by such order, and where any exclusive right of interment in any such burial ground has been purchased or acquired before the passing of this Act, it shall be lawful for one of Her Majesty's principal secretaries of state from time to time, on application being made to him, and on being satisfied that the exercise of such right will not be injurious to health, to grant license for the exercise of such right during such time and subject to such conditions and restrictions as such secretary of state may think fit, but such license shall not prejudice or in anywise affect the authority of the ordinary, or of any other person who, if this Act had not been passed, might have prohibited or controlled interment under such right, nor dispense with any consent which would have been required, nor otherwise give to such right any greater force or effect than the same would have had if this Act had not been passed. Saving of certain rights to bury in vaults, &c.

This section is extended to parishes outside the metropolis by s. 7 of 16 & 17 Vict. c. 134, *post*, p. 153.

In the case of a private burial ground which has been closed by order in council, the rights of persons who had acquired

15 & 16 Vict. c. 85.

family graves in perpetuity will be protected and an injunction granted to restrain the persons having the management and control of the burial ground from interfering with the tombstones over the private graves. *Moreland* v. *Richardson*, [1856] 22 Beav. 596; 2 Jur. N. S. 726; 25 L. J. Ch. 883; 24 Beav. 33; 26 L. J. Ch. 690, & 3 Jur. N. S. 1189.

Applications under this section for leave to bury in a church closed for burials, should not be deferred until a death has taken place, as then there can be no sufficient time to inquire into the circumstances. The best time is immediately after the order has been made.

Where no order in council has been made by virtue of these statutes, the consent of the incumbent, and his alone, is necessary to burial in any part of his church. See Introduction, *ante*, p. 18 (Cro. Jac. 367; Gibs. 453; Wats. c. 39—887); but he cannot grant the separate use of any vault either in the church or churchyard without a faculty (*Bryan* v. *Whistler*, 8 B. & C. 288); nor refuse burial in a vault for which such faculty has been granted. In the case of *Nevill* v. *Baker* (*Arches Court, not reported*), a clergyman was suspended three months for refusing burial in a family vault. *Per curiam*, The consent of the incumbent to the faculty (for every prescription presumes a faculty), when the vault was constructed, will bind his successor; nor is it necessary to prove the constant use of a vault existing from time immemorial. The head of the family has, moreover, a right to admit any member of the family who, though non-resident, is a parishioner; but no blame would attach for refusing burial in any place proved to be dangerous to health—it would be a duty to do so. The incumbent may make a bargain for opening a vault in his church for the burial of a non-parishioner, which may be enforced at common law (*Neville* v. *Bridger*, [1874] L. R. 9 Ex. 214; 43 L. J. N. S. Ex. 147; 30 L. T. N. S. 690; 22 W. R. 740). As to fees of incumbents on vault burial in churches, see *Exeter Case*, 1 Salk. 334; *Spry* v. *Gallop*, [1847] 16 M. & W. 730; 16 L. J. N. S. Ex. 218; *Spry* v. *Marylebone*, &c., [1839] 2 Curt. 11; *Bryant* v. *Foot*, [1868] 16 L. T. N. S. 55; 36 L. J. N. S. Q. B. 65; also 18 L. T. N. S. 578; L. R. 3 Q. B. 497; 37 L. J. N. S. Q. B. 217; 9 B. & S. 444; *Rich* v. *Bushnell*, [1827] 4

Hag. Eccl. 164; *Maidman* v. *Malpas*, [1794] 1 Hagg. Con. 205; *Frances* v. *Ley*, Cro. Jac. 366.

The faculty may be granted for the use of a vault under a chancel originally constructed without a faculty, and where no previous right existed (*Kingsmill* v. *Rugg*, [1868] 16 L. T. N. S. 540; L. R. 1 A. & E. 343). But the entrance to the vault not being in consecrated ground, held, on appeal, that the faculty should be contingent on sufficient ground being first consecrated near the opening to the vault on which the burial service might be performed (*S. C.* on appeal, 18 L. T. N. S. 94; L. R. 2 P. C. 59; 39 L. J. Ecc. 13).

Saving as to cemeteries in Schedule (B) and new burial grounds hereafter approved of by secretary of state.

VII. The provisions of this Act shall not extend to authorise the discontinuance of burials or to prevent the burial of the body of any person in any of the cemeteries mentioned in the Schedule (B) to this Act, or in any burial ground or cemetery to be hereafter provided with the approval of one of Her Majesty's principal secretaries of state, as herein mentioned.

Saving as to St. Paul's Cathedral and Westminster Abbey.

VIII. Nothing in this Act contained shall extend to prevent the interment in the cathedral church of St. Paul's, London, or in the collegiate church of St. Peter's, Westminster, of the body of any person, where Her Majesty, by any writing under her royal sign manual, shall signify her pleasure that the body be so interred.

New burial grounds in the metropolis to be approved by secretary of state.

IX. No new burial ground or cemetery (parochial or non-parochial) shall be provided and used in the metropolis, or within two miles of any part thereof, without the previous approval of one of Her Majesty's principal secretaries of state.

The definition of "metropolis" is contained in s. 53, *infra*, p. 144.

When any new site has been selected, an ordinary letter stating the fact and requesting approval of the same should be addressed to the Home Secretary, and any contract for the

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acquisition of the site should be made subject to such approval.

With regard to sites for churches and the enlargement of burial grounds, it may be remarked that the 56 Geo. III. c. 141, s. 1, enables ecclesiastical corporate bodies to alienate lands for these purposes, with consent of the patron and ordinary, at a valuation by some competent person verified before a justice (2). No such alienation is to be questioned for want of form after twenty years (3). All ground which has been or shall be consecrated, shall after twenty years be discharged from all adverse titles, claims and demands whatsoever, and be absolutely vested in trustees or incumbent (4). By 58 Geo. III. c. 45, the Commissioners may accept sites for churches and churchyards (s. 33), which persons under disability are empowered to convey (36), and if unwilling or unable to treat, the matter may be settled by a jury (40). And the same Commissioners are empowered by 59 Geo. III. c. 134, to grant money for providing or enlarging cemeteries (22), or churchwardens may levy rates for these purposes (23). All parishes required by the Commissioners shall furnish lands for enlarging or making additional churchyards as the Commissioners shall deem necessary, in the manner therein set forth (36, 7, 8); and under 3 Geo. IV. c. 72, public departments and all corporations may grant sites for cemeteries without valuable consideration (s. 1). Commissioners may procure or require parishes to obtain sites for additional cemeteries whether contiguous to present site or not (3), and may advance money for the same on security of church rates (5–7), and may take land for the purpose on paying value assessed (8). Or the Commissioners may authorise parishes to purchase additional burial grounds which shall be deemed part of parish (26); but the power to make a rate for the purpose, under these Acts, has been doubted (see *R.* v. *Abney*, [1854] or *Whitwick Churchwardens* v. *Stinson*, 18 J. P. 711; 23 L. J. M. C. 154); and these powers, for the provisions of burial grounds, are for the most part practically superseded by the recent Acts embracing the whole subject of burial accommodation.

An addition to any existing churchyard may be consecrated without any fee beyond 5s. for deposit of the consecration

deed, 30 & 31 Vict. c. 133 (ss. 1, 2, 3). Persons under disability may convey land for such additions (s. 4), in accordance with form prescribed (s. 5), free of stamp duty (s. 6), to vest as old churchyards (s. 7), saving provisions of former Acts (s. 8); exclusive right of burial in portion of such added ground may be secured to the grantor (s. 9), (not exceeding one-sixth part of the whole of the said land, 31 & 32 Vict. c. 47, s. 1), subject to conditions (s. 10), and such reserved portions cannot be closed under the Burial Acts unless by special order (s. 11). 15 & 16 Vict. c. 85.

The provisions of 13 & 14 Vict. c. 28, for rendering effectual titles of societies to places of worship are by 32 & 33 Vict. c. 26, extended to burial grounds acquired by similar societies, but so as not to interfere with the Burial Acts.

For similar provision as to parishes outside the metropolis see ss. 1 and 6 of 16 & 17 Vict. c. 134. If the approval mentioned in this section is given, the provisions of this Act with regard to discontinuance of burial will not apply to the new burial ground, see s. 7, *supra*.

X. Upon the requisition in writing of ten or more ratepayers of any parish in the metropolis in which the place or places of burial shall appear to such ratepayers insufficient or dangerous to health (and whether any order in council in relation to any burial ground in such parish has or has not been made), the churchwardens or other persons to whom it belongs to convene meetings of the vestry of such parish shall convene a meeting of the vestry, for the special purpose of determining whether a burial ground shall be provided under this Act for the parish; and public notice of such vestry meeting, and the place and hour of holding the same, and the special purpose thereof, shall be given in the usual manner in which notices of the meetings of the vestry are given, at least seven days before holding such vestry meeting; and if it be resolved by the vestry that a burial ground shall be provided under this Act

Churchwardens after order, or at any time upon requisition of ten ratepayers to convene vestry meeting, to determine whether a burial ground shall be provided.

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for the parish, a copy of such resolution, extracted from the minutes of the vestry, and signed by the chairman, shall be sent to one of Her Majesty's principal secretaries of state.

See Forms 2, 3, and 4, *post*.

The provisions of the Burial Acts as to the appointment of burial boards by parishes and parts of parishes are shortly as follows. Under this Act a burial board could be appointed for a whole *common law* parish having a separate vestry, whether it separately maintained its own poor or not (*R.* v. *Sudbury Burial Board*, [1858] E. B. & E. 264; 31 L. T. 161; 27 L. J. Q. B. 232), and whether the common law parish had or had not been divided into separate ecclesiastical districts (*R.* v. *Overseers of Walcot*, [1862] 2 B. & S. 555; 31 L. J. M. C. 217). By s. 23 two parishes might unite in providing a common burial ground. By 18 & 19 Vict. s. 12, burial boards can be appointed for ecclesiastical parishes having separate burial grounds before that Act; and by 20 & 21 Vict. c. 81, s. 5, for ecclesiastical parishes, whether previously possessing a burial ground or not. If a burial board be appointed for a whole common law parish, separate ecclesiastical parishes may under these latter Acts subsequently appoint separate burial boards for themselves (*R.* v. *Overseers of Tonbridge*, [1884] 11 Q. B. D. 134; 13 Q. B. D. 339; *R.* v. *Overseers of Walcot St. Swithin*, [1862] 2 B. & S. 571; 31 L. J. M. C. 221). A board may be constituted for the rest of a common law parish exclusive of an ecclesiastical district within it (*Viner* v. *Tonbridge*, [1859] 28 L. J. M. C. 251; 5 Jur. N. S. 1293; 2 El. & El. 9).

The requisition signed by ten ratepayers is unnecessary, as the churchwardens have power to summon the meeting without it (see 18 & 19 Vict. c. 128, s. 3, *post*, p. 169).

The word "vestry" is defined in s. 52, *infra*, p. 143.

A vestry, so called from the room where the priest puts on his vestments, in which it is usually held, is the assembly of the parish met in any convenient place for the despatch of business (Shaw's Par. L. p. 170). By 13 & 14 Vict. c. 57, powers are given for providing rooms distinct from the church for holding vestry meetings and appointing vestry clerks for parishes having a population of over 2,000. Vestry

meetings are convened by notice in writing, stating the time and place of holding the same and the special purpose thereof, signed by a churchwarden, the incumbent, curate, or an overseer of the parish, and affixed on or near to the principal door of each church or chapel in the parish previously to the commencement of divine service (58 Geo. III. c. 69, s. 1, amended by 7 Will. IV. & 1 Vict. c. 45, ss. 1, 2, 3). The incumbent of the parish presides by right, if present (*Wilson* v. *M'Math*, [1819] 3 Phill. 67); if absent, a chairman may be elected by the meeting, who shall have a casting vote (58 Geo. III. c. 69, s. 2). Every inhabitant or person occupying land within the parish rated to the poor at any amount under 50*l.* is entitled to one vote, and all persons rated at 50*l.* or upwards are entitled to a vote for every 25*l.* value. No person, however, shall be entitled to more than six votes. Joint property may be represented by one of the owners, if but one present, in respect of the whole of the joint charge (*Ibid.* s. 3, and 59 Geo. III. c. 85, s. 1). New inhabitants may vote in respect of property for which they are liable to be rated (58 Geo. III. c. 69, s. 4); but no person is entitled to vote who shall not have paid the last poor rate actually charged upon him (*Ibid.* s. 5, explained by 59 Geo. III. c. 85, s. 3), if such rate shall have been made or become due three calendar months or more immediately preceding such vestry meeting (16 & 17 Vict. c. 65, s. 1). A clerk or agent may vote for a corporation or company (59 Geo. III. c. 85, s. 2). The votes of parishioners in vestry are to be taken by a show of hands or by poll. A poll is demandable as of right, and, if demanded, should, in the absence of other business, be taken immediately; but if, from the number present, time does not allow of this, the chairman may, on his own authority, adjourn the meeting for the purpose, so as to give all persons entitled a reasonable opportunity of voting (*R.* v. *D'Oyley*, [1840] 4 P. & D. 52; 12 Ad. & Ell. 139). And where due notice has been given that, in the event of a poll being demanded, the meeting will be adjourned to another building to take the same, the chairman may adjourn for the purpose (*Baker* v. *Wood*, [1837] 1 Curteis, 507; *R.* v. *Archdeacon of Chester*, [1834] 1 Ad. & Ell. 342; 3 Nev. & Man. 413), but he cannot adjourn against the wishes of the majority, no such notice having been given, so as to disturb the regular order of

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the proceedings, the general right of adjournment being in the meeting (*Stoughton* v. *Reynolds*, [1736] 2 Stra. 1045). If an amendment be carried by show of hands, and lost on a poll, the original motion is not therefore carried, but should be also put to the meeting, and a show of hands taken upon it, when the poll may be taken on each question, for and against, at the same time (*Elt* v. *The Burial Board of Islington*, [1854] 1 Kay, 449). A vote taken after misstatement of an important point is void, and must be taken over again (*Re Egham Burial Board*, [1857] 3 Jur. N. S. 956). The chairman should sign the proceedings. On refusal to grant a poll, he may be compelled by mandamus. A rule made by one vestry for the regulation of its proceedings is not binding on a succeeding one; nor is the confirmation of a succeeding vestry necessary to make the legal acts of a preceding one valid; and in the case of *Mawley* v. *Barbet*, [1799] 2 Esp. N. P. 687, it was held that a vestry had no power to rescind an appointment of churchwardens made at the preceding vestry. The statutes for regulating vestries have not taken away the common law right of voting by a poll (*R.* v. *St. Mary, Newington*, [1848] 17 L. J. N. S. Q. B. 220; *Campbell* v. *Maund*, [1836] 5 Ad. & Ell. 865).

For decisions as to who are the proper persons to appoint a burial board when both a select and general vestry exist, see *R.* v. *Peters*, [1856] 6 E. & B. 226; *R.* v. *Gladstone*, [1857] 7 E. & B. 575. On the whole subject of select vestries, see Cripps' Church and Clergy, p. 695.

The meeting of metropolitan vestries is regulated by 19 & 20 Vict. c. 112, s. 9.

By s. 27 of 20 & 21 Vict. c. 81, no resolution or proceeding of a vestry for the purposes of the Burial Acts is to be void or voidable by reason of any defect or irregularity in the notice of the meeting, or error in calling the vestry, or in its proceedings, unless notice in writing of the defect, irregularity, or error be given at the meeting, or within seven days afterwards.

By 22 & 23 Vict. c. 98, s. 49, re-enacted by 38 & 39 Vict. c. 55, s. 343, when a vestry of a parish comprised in a local government district resolves to appoint a burial board, the local board may, at the option of the vestry, be the burial

board for such parish, and the expenses are to be defrayed out of a rate levied in the parish in the same manner as a general district rate. Provided that, if such parish has been declared a ward for the election of members of the local board, such members shall form the burial board for the parish. 15 & 16 Vict. c. 85.

By s. 7 (1) (*c*) of the Local Government Act, 1894, the Burial Acts are described as "adoptive Acts," and by that section in a rural parish the parish meeting has exclusively the power of adopting them; and by sub-s. 8 of that section a resolution to provide a burial ground under the Burial Acts is deemed an adoption of the Acts. Where the Burial Acts are adopted by a parish meeting for the whole or part of a rural parish, and the parish has a parish council, the parish council will be the authority for the execution of the Burial Acts (s. 7, sub-s. 7). See Introduction, p. 83. A rural parish is defined by s. 1 (2) as every parish in a rural sanitary district; and by s. 1 (3), where a parish is, at the passing of the Local Government Act, 1894, partly within and partly without a rural sanitary district, the part of the parish which is within the district and the part of the parish which is without, shall, subject to alteration of areas made under the provisions of the Act, be separate parishes. By s. 75 "rural sanitary district" has the same meaning as in the Local Government Act, 1888, and in s. 9 of the Public Health Act, 1875.

By 18 & 19 Vict. c. 128, s. 3, set out *infra*, the churchwardens may, without the requisition of the ratepayers, and in the circumstances mentioned in that section must, call a meeting of the vestry; by the Local Government Act, 1894, s. 6, these powers of the churchwardens are transferred to the parish council of a rural parish. The parish council will therefore have to summon the parish meeting. By s. 45, parish meetings are to be held at such time and place as the parish council fix, or if there is no parish council, as the chairman of the parish meeting fixes.

A parish meeting may be convened by the chairman of the parish council, or by any two parish councillors, or by the chairman of the parish meeting, or by any six parochial electors (s. 45, sub-s. 3).

The adoption of the Acts will be by a bare majority.

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In rural parishes not having a separate parish council, the powers, duties, and liabilities of the vestry, except those relating to affairs of the church or ecclesiastical charities, are transferred to the parish meeting, s. 19 (4).

In other rural parishes the same powers, &c., are transferred to the parish council, s. 6 (1). And by s. 52 (4), any reference to the vestry or churchwardens will be construed as though the reference were to the parish meeting or parish council as the case requires.

By rule 3 of the First Schedule to the Local Government Act, 1894, fourteen days' notice must be given before holding a meeting to adopt the Burial Acts, and by rule 7 any parochial elector can demand a poll.

By s. 51, public notice of a parish meeting is to be given in the *manner* required for giving notice of vestry meetings, and by posting the notice in some conspicuous place or places within the parish, and in such other manner (if any) as appears to the council or persons convening the meeting desirable.

Notice of vestry meetings had to be a public notice specifying the place, hour, and special purpose of the vestry meeting "three days at least" before the appointed day. The notice must be in writing, and copies must, previously to divine service on Sunday, either in the morning or the evening, be affixed on or near to the principal or most usual door of all churches and chapels of the Established Church within the parish in which divine service is performed (58 Geo. III. c. 69, s. 1, amended and in part repealed by 7 Will. IV. & 1 Vict. c. 45, s. 2). Section 51 of the Local Government Act, 1894, refers only to the manner of giving the notice and not to the length of notice.

In case vestry agree to provide a burial ground, board to be appointed.

XI. In case of such resolution as aforesaid the vestry shall appoint not less than three nor more than nine persons, being ratepayers of the parish, to be the burial board of such parish, of whom one-third, or as nearly as may be one-third (to be determined among themselves), shall go out of office yearly at such time as shall be from time to time fixed by the vestry, but shall be

eligible for immediate reappointment: Provided always, that the incumbent of the parish shall be eligible to be appointed and reappointed from time to time as one of the members of the said board, although not a rate-payer of the parish; provided also, that any member of the board may at any time resign his office, on giving notice in writing to the churchwardens or persons to whom it belongs to convene meetings of the vestry. 15 & 16 Vict. c. 85. Resignation of members.

It will be observed that the incumbent is not *ex officio* a member of the board, but that no further qualification is required for his election.

By s. 2 of the Burial Boards (Contested Elections) Act, 1885 (48 & 49 Vict. c. 21), *vide infra*, p. 231, the expenses of taking polls for the appointment of a burial board are to be defrayed by the burial boards as if expenses incurred in carrying the Burial Acts into execution.

By Schedule V., part iii. of the Public Health Act, 1875, re-enacting 29 & 30 Vict. c. 90, s. 44, when the district of a burial board is included in or conterminous with the district of an urban authority, the burial board may by resolution of the vestry, and by agreement of the burial board and urban authority, transfer to the latter all their estate, property, rights, powers, duties, and liabilities.

As to the effect of the Local Government Act, 1894 (56 & 57 Vict. c. 73), see note to s. 10, *ante*, p. 105, and ss. 7, 19, 53, 56, 62, and 67 of that Act.

XII. *Any vacancies in the board may be filled up by the vestry when and as the vestry may think fit.* Vacancies to be filled up by vestry.

This section was practically repealed by 18 & 19 Vict. c. 128, s. 4, which contains new provisions for filling up vacancies, and it was actually repealed by the Statute Law Revision Act, 1875.

XIII. The board shall meet *at least once in every month* at their office, or some other convenient place previously publicly notified, and the said board may meet at such *other* time as at any previous meeting Meetings of the board.

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shall be determined upon; and it shall be at all times competent for any two members of the board, by writing under their hands, to summon, with at least forty-eight hours notice, the board for any special purpose mentioned in such writing, and to meet at such time as shall be appointed therein.

The words in italics were repealed by 18 & 19 Vict. c. 128, s. 5. See *post*, Form 5.

Quorum of meetings of the board.

XIV. At all meetings of the board any number not less than three members of such board shall be a sufficient number for transacting business, and for exercising all the powers of the board.

A conveyance of land by the board may be under the hands of two members (s. 28).

Board may appoint and remove officers, &c.

XV. The board shall appoint, and may remove at pleasure, a clerk and such other officers and servants as shall be necessary for the business of the board and for the purposes of their burial ground, and, with the approval of the vestry, may appoint reasonable salaries, wages, and allowances for such clerk, officers, and servants, and, when necessary, may hire and rent a sufficient office for holding their meetings and transacting their business.

As to rights of incumbents, sextons, and officers appointed by the board, see note to s. 32, p. 123, *infra*.

The contracts of burial boards for the engagement of officials are subject to the ordinary rule that the contracts of corporations must be under seal (*Austin* v. *Bethnal Green*, [1874] L. R. 9 C. P. 91; 43 L. J. C. P. 100; 29 L. T. N. S. 807; 22 W. R. 406).

As to appointment of officers by, and transfer of officers to, councils under the Local Government Act, 1894, see ss. 17 and 81 of that Act.

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Minutes of proceedings of board to be entered in a book.

XVI. Entries of all proceedings of the board, with the names of the members who attend each meeting, shall be made in books to be provided and kept for that purpose, under the direction of the board, and shall be signed by the members present or any two of them; and all entries purporting to be so signed shall be received as evidence, without proof of any meeting of the board having been duly convened or held, or of the presence at any such meeting of the persons named in any such entry as being present thereat, or of such persons being members of the board, or of the signature of any person by whom any such entry purports to be signed, all which matters shall be presumed until the contrary be proved; and the board shall provide and keep books in which shall be entered true and regular accounts of all sums of money received and paid for or on account of the purposes of this Act in the parish, and of all liabilities incurred by them for such purposes, and of the several purposes for which such sums of money are paid and such liabilities incurred.

Board to keep accounts, which shall be open to inspection.

As to minutes, see Local Government Act, 1894, Sched. I., parts iii. and iv., *infra*, pp. 383 and 384; as to money for the purposes of the Burial Acts, see ss. 7 (6) and 11 (5) of the Local Government Act, 1894, *infra*.

Penalty for refusing to allow inspection.

XVII. All such books shall at all reasonable times be open to the examination of every member of such board, churchwarden, overseer, and ratepayer, without fee or reward, and they respectively may take copies of or extracts from such books, or any part thereof, without paying for the same; and in case the members of such board, or any of them, or any of the officers or servants of such board having the custody of the said books, being thereunto reasonably requested, refuse to permit or do not permit any churchwarden, overseer, or

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ratepayer to examine the same, or take any such copies or extracts, every such member, officer, or servant so offending shall for every such offence, upon a summary conviction thereof before any justice of the peace, forfeit any sum not exceeding five pounds.

See ss. 17 (8) and 58 (4) and (5) of the Local Government Act, 1894.

Auditors to be appointed yearly, who shall examine the accounts, and report to vestries.

XVIII. The vestry shall yearly appoint two persons, not being members of the board, to be auditors of the accounts of the board, and at such time in the month of March in every year as the vestry shall appoint the board shall produce to the auditors their accounts, with sufficient vouchers for all monies received and paid, and the auditors shall examine such accounts and vouchers, and report thereon to the vestry.

See 23 & 24 Vict. c. 64, s. 3, *infra*, p. 232, and as to auditors of accounts of parishes in Schedules A and B of the Metropolis Management Act, 1855 (18 & 19 Vict. c. 120), see s. 197 of that Act.

As to the audit of accounts of district and parish councils, see s. 58 of the Local Government Act, 1894, *post*, p. 368.

Expenses to be paid out of the poor rates.

XIX. The expenses incurred or to be incurred by the burial board of any parish in carrying this Act into execution shall be chargeable upon and paid out of the rates for the relief of the poor of such parish, the expenses to be so incurred for or on account of any parish in providing and laying out a burial ground under this Act and building the necessary chapel or chapels thereon not to exceed such sum as the vestry shall authorise to be expended for such purpose; and the overseers or other officers authorised to make and levy rates for the relief of the poor in any parish shall, upon receipt of a certificate under the hands of such number of members of the burial board as are

authorised to exercise the powers of the board of the sums required from time to time for defraying any such expenses as aforesaid, pay such sums out of the rates for the relief of the poor as the board shall direct. 15 & 16 Vict. c. 85.

See *post*, Form 6.

In boroughs, the expenses may be defrayed from the borough fund, 17 & 18 Vict. c. 87, s. 3, or a separate rate may be made, 20 & 21 Vict. c. 81, s. 22. Local boards of health, or improvement commissioners acting as burial boards, by virtue of an order in council, may also make a separate burial rate, 23 & 24 Vict. c. 64, s. 1.

The overseers may refuse to levy a rate unless it be apparent that the certificate is for expenses which can be legally incurred by the board (*R.* v. *Kilham Burial Board*, [1885] 1 Times Law Reports, 577, 678; *R.* v. *Wright*, [1861] 5 L. T. N. S. 345; 8 Jur. N. S. 260).

If the vestry refuses to authorise expenditure declared necessary by the burial board for providing and laying out a burial ground and building the chapel, the board may apply to the Home Secretary and obtain his sanction in lieu of the vestry (18 & 19 Vict. c. 81, s. 6).

For the expenses when a burial ground is provided under the Local Government Act, 1894, see ss. 7, 11, and 12 of that Act and the notes thereon, *post*, pp. 325, 337, 338.

XX. Provided always, that it shall be lawful for the board, with the sanction of the vestry and the approval of the Treasury, to borrow any money required for providing and laying out any burial ground under this Act and building a chapel or chapels thereon, or any of such purposes, and to charge the future poor rates of the parish with the payment of such money and interest thereon; *provided that there shall be paid in every year, in addition to the interest of the money borrowed and unpaid, not less than one-twentieth of the principal sum borrowed, until the whole is discharged.* Power to borrow money, with sanction of vestry, and approval of the Treasury.

This last proviso is repealed by 20 & 21 Vict. c. 81, s. 18, see p. 217.

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The like borrowing power is conferred on improvement commissioners constituted burial boards by 25 & 26 Vict. c. 100, s. 1. See Appendix, Form 7, *post*.

See 20 & 21 Vict. c. 81, ss. 18–21, which repeal the words in italics, and substitute repayment by means of a sinking fund.

By 18 & 19 Vict. c. 128, s. 6, an appeal to a secretary of state lies from the refusal of the vestry to sanction a loan.

In *Scadding* v. *St. Pancras Burial Board*, [1889] W. N. 45; on appeal 90, it was held that money paid to a burial board for reinterring bodies removed by a railway company from another burial ground went in aid of the rates, and was not due as fees for burial under s. 36.

As to loans for providing burial grounds under the Local Government Act, 1894, see s. 12 of that Act, *post*, p. 338; as to existing liabilities if the powers of a burial board are transferred to other bodies, s. 67, *post*, p. 370.

The public works loan commissioners may advance money for the purposes of this Act.

XXI. The commissioners for carrying into execution an Act of the session holden in the fourteenth and fifteenth years of Her Majesty, chapter twenty-three, "to authorise for a further period the advance of money out of the Consolidated Fund to a limited amount for carrying on public works and fisheries and employment of the poor," and any Act or Acts amending or continuing the same, may from time to time make to the burial board of any parish for the purposes of this Act any loan under the provisions of the recited Act, or the several Acts therein recited or referred to, upon security of the rates for the relief of the poor of the parish.

Corresponding provisions in the Public Works Loans Act, 1875 (38 & 39 Vict. c. 89), are now substituted for those of 14 & 15 Vict. c. 23 referred to in this section.

By that Act certain specified sums are placed at the disposal of the commissioners, to be charged upon the Consolidated Fund, for the purposes of making such advances for public works, and for such periods as they may from time to time be authorised to make, bearing interest

at 5*l.* per cent. (7 Geo. IV. c. 30, s. 2; 38 & 39 Vict. c. 89. s. 9); and in respect of loans granted after 15th August, 1879, the interest may be at such rate (not less than that mentioned in any special Act authorising the loan) as the Treasury may deem necessary in order to prevent loss to the Exchequer (42 & 43 Vict. c. 7 7, s. 2). This, however, is only acted on under special circumstances. On application at the Public Works Loan Office, any burial board may obtain a loan on the terms and security authorised by 15 & 16 Vict. c. 85, and prescribed by the commissioners, who require all monies advanced by them to be repaid by annual instalments within twenty years; and it is enacted that in all cases where loans shall be made by the Public Loan Board they shall (notwithstanding any other Act passed or to be passed to the contrary) be made in accordance with the provisions of the Public Works Loan Acts; and the securities for the same shall have such priorities as if they had been made under the said Acts except as altered by express reference to this Act. These loans, however, may be paid off at any time without notice. 15 & 16 Vict. c. 85.

XXII. The money raised for defraying such expenses, and the income arising from the burial ground provided for the parish, except fees payable to the incumbent, clerk, and sexton of the parish, and the other fees herein directed to be otherwise paid, shall be applied by the board in or towards defraying the expenses of such board under this Act; and whenever, after repayment of all monies borrowed for the purposes of this Act in or for any parish and the interest thereof, and after satisfying all the liabilities of the board with reference to the execution of this Act in or for the parish, and providing such a balance as shall be deemed by the board sufficient to meet their probable liabilities during the then next year, there shall be at the time of holding the meeting of the vestry at which the yearly report of the auditors shall be produced any surplus money at the disposal of the board, they shall pay the Monies raised, and the income arising from burial ground, to be applied towards defraying expenses.

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same to the overseers, in aid of the rate for the relief of the poor of the parish.

See s. 36 for fees otherwise paid.

In the case of local boards of health or improvement commissioners constituted burial boards, any such surplus will be applied in aid of the general district rate or improvement rate (23 & 24 Vict. c. 64, s. 3, p. 232).

A burial board is liable to be assessed to the income tax in respect of surplus income, inasmuch as the provision requiring it to be applied in aid of the poor rate does not prevent it from being a profit (*Burial Ground for Paddington* v. *Commissioners of Inland Revenue*, [1884] 13 Q. B. D. 9; 50 L. T. N. S. 211; 53 L. J. Q. B. 224; 32 W. R. 551; 48 J. P. 311).

Vestries of parishes may concur in providing a burial ground for the common use of such parishes.

XXIII. The vestries of any parishes which shall have respectively resolved to provide burial grounds under this Act may concur in providing one burial ground for the common use of such parishes, in such manner, not inconsistent with the provisions of this Act, as they shall mutually agree, and may agree as to the proportions in which the expenses of such burial ground shall be borne by such parishes, and the proportion for each of such parishes of such expenses shall be chargeable upon and paid out of the monies to be raised for the relief of the poor of the same respective parish accordingly; and according and subject to the terms which shall have been so agreed on, the burial boards appointed for such parishes respectively shall, for the purpose of providing and managing such one burial ground, and taking and holding land for the same, act as one joint burial board for all such parishes, and may have a joint office, clerk, and officers, and all the provisions of this Act shall apply to such joint burial board accordingly; and the accounts and vouchers of such board shall be examined and reported on by the auditors of each of such parishes; and the surplus money at the

disposal as aforesaid of such board shall be paid to the overseers of such parishes respectively in the same proportions as those in which such parishes shall be liable to such expenses. 15 & 16 Vict. c. 85.

A parish which comes within the definition of parish in s. 52, but possesses no separate vestry of its own, cannot join with another parish in providing a burial ground under this section. See notes to s. 10, *supra*, p. 101. Such a parish may provide a joint burial ground with certain other parishes under 18 & 19 Vict. c. 128, s. 11, and 20 & 21 Vict. c. 81, s. 9, the latter Act making the previous consent of a secretary of state necessary (*Burial Board of Amersham* v. *Ives*, [1862] 7 L. T. N. S. 244; *R.* v. *Wright*, [1861] 5 L. T. N. S. 345, 8 Jur. N. S. 260).

In boroughs a separate rate may be made (20 & 21 Vict. c. 81, s. 22, *infra*, p. 219). Local Boards of Health or Improvement Commissioners acting as burial boards, may also make a separate rate (23 & 24 Vict. c. 64, ss. 1 and 2, *infra*, pp. 231 and 232).

See, for effect on this section of the Local Government Act, 1894, ss. 6, 7, and 57 of that Act.

Incorporation of burial boards.

XXIV. For the more easy execution of the purposes of this Act the burial board of every parish appointed under this Act shall be a body corporate, by the name of "The Burial Board for the Parish of , in the County of ," and by that name shall have perpetual succession and a common seal, and shall sue and be sued, and have power and authority (without any licence in mortmain) to take, purchase, and hold land for the purposes of this Act; and where the burial boards of two or more parishes act as and form one joint burial board for all such parishes for the purposes aforesaid, such joint board shall for such purposes only be a body corporate by the name of "The Burial Board for the Parishes of and , in the County of ," and by that name shall have

15 & 16 Vict. c. 85.

perpetual succession and a common seal, and shall sue and be sued, and have power and authority as aforesaid to take, purchase, and hold land for the purposes of this Act.

The contractual powers of a burial board are governed by the same rules and limitations as other statutory corporations. It is liable for such torts as a corporation can commit (*Crowhurst* v. *Amersham Burial Board*, [1878] 4 Ex. D. 5).

Any person forging or counterfeiting the seal of a burial board is guilty of felony (20 & 21 Vict. c. 81, s. 15, *infra*, p. 215).

See s. 3 (9) of the Local Government Act, 1894, *infra*, p. 320.

Board to provide a burial ground, which may be within or without the parish.

XXV. Every burial board shall, with all convenient speed, proceed to provide a burial ground for the parish or parishes for which they are appointed to act, and to make arrangements for facilitating interments therein; and in providing such burial ground the board shall have reference to the convenience of access thereto from the parish or parishes for which the same is provided; and any such burial ground may be provided either within or without the limits of the parish, or all or any of the parishes, for which the same is provided; *but no ground not already used as or appropriated for a cemetery shall be appropriated as a burial ground, or as an addition to a burial ground, under this Act, nearer than two hundred yards to any dwelling-house, without the consent in writing of the owner, lessee, and occupier of such dwelling-house.*

The words in italics are replaced and repealed by 18 & 19 Vict. c. 128, s. 9, which substitutes one hundred yards for two hundred yards; see also 17 & 18 Vict. c. 87, s. 12, *infra*, p. 178.

No grave may be made nearer than twenty feet to the external walls of a church or chapel built under 58 Geo. III. c. 45; see s. 80 of that Act.

The Cemeteries Clauses Act (10 & 11 Vict. c. 65, s. 10) makes two hundred yards the distance for any cemetery governed by that Act. 15 & 16 Vict. c. 85.

The distance is to be measured from the walls of the dwelling-house itself (*Wright* v. *Wallasey Local Board*, [1887] 18 Q. B. D. 783).

Suggestions for providing new burial grounds are set out in the Appendix, *infra*.

Board may, with approval of vestry, purchase land of cemeteries.

XXVI. For the providing such burial ground it shall be lawful for the burial board, with the approval of the vestry or vestries of the parish or respective parishes, to contract for and purchase any lands for the purpose of forming a burial ground, or for making additions to any burial ground to be formed or purchased under this Act, as such board may think fit, or to purchase from any company or persons entitled thereto any cemetery or cemeteries, or part or parts thereof, subject to the rights in vaults and graves, and other subsisting rights, which may have been previously granted therein: Provided always, that it shall be lawful for such board, in lieu of providing any such burial ground, to contract with any such company or persons entitled as aforesaid for the interment in such cemetery or cemeteries, and either in any allotted part of such cemetery or cemeteries or otherwise, and upon such terms as the burial board may think fit, of the bodies of persons who would have had rights of interment in the burial grounds of such parish or respective parishes.

See *post*, Form 10.

Certain provisions of 8 & 9 Vict. c. 18, incorporated with this Act.

XXVII. "The Lands Clauses Consolidation Act, 1845," except the provisions of that Act "with respect to the purchase and taking of lands otherwise than by agreement," "with respect to the recovery of forfeitures, penalties, and costs," "with respect to lands acquired

15 & 16 Vict. c. 85.

by the promoters of the undertaking under the provisions of the 'Lands Clauses Consolidation Act, 1845,' or the special Act, or any Act incorporated therewith, but which shall not be required for the purposes thereof," and "with respect to the provisions to be made for affording access to the special Act by all parties interested," shall be incorporated with this Act; and for the purposes of this Act the expression "the promoters of the undertaking," wherever used in the said Lands Clauses Consolidation Act, shall mean any such burial board.

The Lands Clauses Consolidation Act (8 & 9 Vict. c. 18) may be applied to all undertakings authorised by any "special Act" thereafter to be passed, so that the two may be construed together as forming one Act (s. 1). The chief provisions incorporated are set out *infra*.

See Appendix, Forms 11 and 12, *infra*.

Power to sell lands not wanted.

XXVIII. It shall be lawful for any such board, with the approval of the vestry, to sell and dispose of any lands purchased by them under this Act, or any part thereof, in which no interment shall have taken place, and which it may appear to the board may be properly sold or disposed of; and for completing and carrying any such sale into effect such board may make and execute a conveyance of the lands sold and disposed of as aforesaid unto the purchaser, or as he shall direct; and such conveyance shall be under the hands of at least two of the members of the board, and under the seal of the board; and the word "grant" in such conveyance shall have the same operation as by the said Lands Clauses Consolidation Act, 1845, is given to the same word in a conveyance of lands made by the promoters of the undertaking; and a receipt under the hands of two of the members of the board shall be a

sufficient discharge to the purchaser of any such lands for the purchase-money in such receipt expressed to be received; and the money to arise from such sale shall be applied to such of the purposes of this Act as the board shall think fit.

See *post*, Forms 11 and 12.

Burial board may, with approval of vestry, &c., appropriate land belonging to parish.

XXIX. Provided always, that any burial board under this Act, with the approval of the vestry and of the guardians of the poor of the parish (if any), and of the poor law board, may from time to time appropriate for the purposes of a burial ground for such parish, either alone or jointly with any other parish or parishes, any land vested in such guardians, or in the churchwardens, or in the churchwardens and overseers of the parish, or in any feoffees, trustees, or others, for the general benefit of the parish or for any specific charity: Provided always, that where any land so taken and appropriated shall be subject to any charitable use such lands shall be taken on such conditions only as the Court of Chancery in the exercise of its jurisdiction over charitable trusts shall appoint and direct.

Land held for the benefit of some of the poor only, may not be appropriated under this section (*In re Egham Burial Board*, [1857] 3 Jur. N. S. 956). Neither can waste land of a manor, used as a village green, be granted by the lord for a burial ground (*Forbes* v. *Eccl. Com.*, [1872] L. R. 15 Eq. 51; 42 L. J. Ch. 97; 27 L. T. N. S. 511; 21 W. R. 169). Any application to the Court must have the sanction of the Charity Commissioners (*Ex parte The Watford Burial Board*, [1856] 2 Jur. N. S. 1045).

The Poor Law Board is now superseded by the Local Government Board (34 & 35 Vict. c. 70, s. 2).

As to the appropriation of land by the council of a borough for the purposes of the Burial Acts, see 17 & 18 Vict. c. 87, s. 11.

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Board may lay out burial ground, and build a chapel for performance of burials according to rites of Established Church.

XXX. It shall be lawful for any burial board to lay out and embellish any burial ground provided by such board in such manner as may be fitting and proper, and to build on any land to be purchased or appropriated for a burial ground under this Act, and according to a plan to be approved of by the bishop of the diocese, a chapel for the performance of the burial service according to the rites of the united Church of England and Ireland; and such burial ground may be consecrated by the bishop of the diocese, when the same shall appear to him to be in a fit and proper condition, for the purposes of interment according to the rites of the united Church: Provided always, that in providing any burial ground such board shall set apart a portion thereof which shall not be so consecrated as aforesaid, and may build thereon a suitable chapel or chapels for the performance of funeral service.

Ground may be set apart for building a chapel, &c.

It is illegal for a burial board knowingly to permit an unqualified or unauthorised person to conduct a religious service at a burial in the consecrated portion of the burial ground (*Wood* v. *Burial Board of Headingley*, [1892] 1 Q. B. 713).

The provision and laying out of a burial ground will include all matters incident thereto, such as making proper approaches. Thus, in case of a road, or an improvement of an existing road, to a new cemetery being required in a parish consisting of several hamlets, each separately rated for highways, it is presumed that the approach will be made by the burial board; though it might, nevertheless, be prudent to take a money-vote from the vestry "for providing and laying out a cemetery and making or improving the approaches thereto."

Vide 16 & 17 Vict. c. 134, s. 7; and 18 & 19 Vict. c. 128, s. 14, *infra*.

Burial board may contract for works to be done.

XXXI. Any burial board may from time to time enter into any contract with any persons or companies for building any chapel or chapels as aforesaid, and

inclosing, laying out, and embellishing any burial ground, and for furnishing any materials and things, and for executing and doing any other works and things necessary for the purposes of this Act, which contracts respectively shall specify the several works and things to be executed, furnished, and done, and the prices to be paid for the same, and the times when the works and things are to be executed, furnished, and done, and the penalties to be suffered in cases of non-performance; and all such contracts, or true copies thereof, shall be entered in books to be kept for that purpose: Provided always, that no contract above the value or sum of one hundred pounds shall be entered into by such burial board for the purposes of this Act unless previous to the making thereof fourteen days' notice shall be given in one or more of the public newspapers published in the county or counties in which the parish or respective parishes shall be situated, expressing the intention of entering into such contract, in order that any person willing to undertake the same may make proposals for that purpose, to be offered to the burial board at a certain time and place in such notice to be mentioned, but it shall not be incumbent on the burial board to contract with the person offering the lowest price.

15 & 16 Vict. c. 85.

No contract above 100*l.* to be entered into without notice.

See *post*, Forms 14 and 15.

The effect of the language of this section is to require all contracts entered into by a burial board to be in writing, and since s. 24 incorporates burial boards, the combined effect of the two sections is to require contracts entered into by burial boards to be in writing under seal.

Certain contracts, however, may be enforceable against a burial board, even where the board has not contracted under seal. Such contracts include contracts where the burial board has had the entire benefit of the contract—at all events in

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cases where the contracts are for the supply of goods from time to time required for corporate purposes (*Nicholson* v. *Bradfield Union*, [1866] L. R. 1 Q. B. 620; *Hunt* v. *Wimbledon Local Board*, [1878] 4 C. P. D., p. 53; *Stevens* v. *Hounslow Burial Board*, [1889] 54 J. P. 309).

It would seem that where the parish council is the authority under the Burial Acts, they would have all the powers of a burial board; but by s. 11 (1) and (2) of the Local Government Act, 1894, a parish council cannot, without the consent of a parish meeting, incur expenses or liabilities which will involve a rate exceeding threepence in the pound for any local financial year, or which will involve a loan; and the parish council cannot, without the approval of the county council, incur any expense or liability which will involve a loan.

Burial ground to be the burial ground of the parish or parishes for which it is provided.

XXXII. From and after the consecration as aforesaid of any burial ground provided under this Act (except any portion thereof intended not to be so consecrated), or where all or any part of such burial ground, by reason of the same having been already consecrated, shall not require to be consecrated, then from and after such time as the bishop of the diocese shall appoint, such burial ground shall be deemed the burial ground of the parish for which the same is provided, and where the same is provided for two or more parishes such burial ground shall be in law as if such parishes were one parish, and as if such burial ground were the burial ground of such one parish; and every incumbent or minister of the parish or of each of the parishes (as the case may be) for which such burial ground is provided shall, by himself and his curate, or such duly qualified persons as such incumbent or minister may authorise, perform the duties and have the same rights and authorities for the performance of religious service in the burial in such burial ground, or in the consecrated portion thereof, of the remains of parishioners or inhabitants of the parish of which he is such incumbent

or minister, and shall be entitled to receive the same fees in respect of such burials which he has previously enjoyed and received; and the clerk and sexton of such parish or of each of such parishes shall (when necessary) perform and exercise the same duties and functions in respect of the burial of the remains of parishioners or inhabitants of the parish of which he is clerk or sexton in such burial ground or the consecrated portion thereof, and shall be entitled to receive the same fees on such burials, as he has previously performed and exercised and received, as if such burial ground were the burial ground of the respective parish of such incumbent or minister, clerk and sexton respectively; and the parishioners and inhabitants of such parish or of each of such parishes shall have the same rights of sepulture in such burial ground as they respectively would have had in the burial ground or burial grounds in and for their respective parish, subject nevertheless to the provisions herein contained. 15 & 16 Vict. c. 85.

Certain portions of the 32nd, 33rd, 35th, 36th, 37th, and 50th sections of this Act are repealed, as regards the *City of London*, by the 20 & 21 Vict. c. 35, s. 3. See p. 195.

See Introduction, *ante*, p. 21, for the right to fees apart from statute; the next section for fees for sale of exclusive rights of burial, vaults, and the right to erect monuments; s. 37, for the power of the vestry, and 17 & 18 Vict. c. 87, s. 10, for the power of the borough council under certain conditions to vary fees or substitute a fixed annual sum; 20 & 21 Vict. c. 81, s. 17, for fees payable for burial in the unconsecrated part of a burial ground; 10 & 11 Vict. c. 65, ss. 52–57, for fees payable under the Cemeteries Clauses Acts; 20 & 21 Vict. c. 81, s. 5, for the right to fees where a new parish is created; 43 & 44 Vict. c. 41, s. 5, as to fees where a burial takes place in consecrated ground otherwise than with the rites of the Church of England; 53 Vict. c. 5, ss. 158, 159, as to fees for the burial of pauper lunatics; 20 & 21 Vict.

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c. 81, s. 13, as to burial before consecration of the burial ground.

The words "every incumbent or minister of the parish" include all incumbents *in* a parish (*Day and Cobb* v. *Barnsley B. B.*, [1865] 6 New Reports, 156; *S. C.*, *sub nom. Day* v. *Peacock*, 12 L. T. N. S. 571; 18 C. B. N. S. 702; 11 Jur. N. S. 428; 34 L. J. C. P. 225). The words "incumbent" and "minister" are defined by s. 52, *infra*, p. 142, by which section the bishop is empowered to determine any difference between two or more persons claiming to be the incumbent or minister.

Burial may take place without the service of the Church of England, notice having been previously addressed to the incumbent or chaplain stating the time, etc. (43 & 44 Vict. c. 41, ss. 1, 2, 3, 4). See *infra*, pp. 239–242.

Ministers in holy orders may perform the Church service in ground not consecrated; or use some other service approved by the ordinary (43 & 44 Vict. c. 41, ss. 12, 13), *infra*, pp. 247, 248.

It will be observed that the reservation of the right to receive the same fees that have been previously received obtains in respect of parishioners or inhabitants only. It does not apply to non-parishioners (*Wood* v. *Headingley-cum-Burley Burial Board*, [1892] 1 Q. B. 713). Where a church had no burial ground in which, before being closed by order in council, persons dying within the district would have been buried as of right, the incumbent was held not to be entitled to any burial fees in a cemetery provided for the district under the Burial Acts (*Hornby* v. *Burial Board of Toxteth Park*, [1862] 8 L. T. N. S. 143; 31 L. J. Ch. 643; 8 Jur. N. S. 531); but if in such a case fees be demanded by and paid to the burial board, the incumbent can claim them (*Stewart* v. *West Derby Burial Board*, [1886] 34 Ch. D. 314). The rights to fees under this section are further curtailed, except in cases of burials where he is entitled under 43 & 44 Vict. c. 41, by the fact that the incumbent cannot claim his fees unless he or his deputy performs the service, and that the burial board is under no obligation to give him notice of a burial (*Wood* v. *Headingley-cum-Burley Burial Board*, *supra*).

A burial board has no right to prevent the parish sexton from performing the duties of his office either by himself or by his deputy—nor will trespass lie if he enter the cemetery for this

purpose contrary to the orders of the board, or for tolling the bell (*St. Margaret's, Rochester, Burial Board* v. *Thompson*, [1871] L. R. 6 C. P. 445; 24 L. T. N. S. 673; 40 L. J. C. P. 213; 19 W. R. 892; *Gell* v. *Birmingham*, [1864] 10 L. T. N. S. 497); but see *Ormerod* v. *Blackburn B. B.*, [1873] 28 L. T. N. S. 438; 21 W. R. 539, where it was held that the above will not apply in the case of a chapelry unless formed into a district parish. See also *White* v. *Norwood Burial Board*, [1885] 16 Q. B. D. 58. 15 & 16 Vict. c. 85.

The burial board is not legally compellable to receive the burial fees itself except in cases coming within s. 36. If, however, it does receive them, the incumbent may recover them by action (*Cronshaw* v. *Wigan Burial Board*, [1871] 25 L. T. N. S. 536; 28 L. T. N. S. 283; 8 L. R. Q. B. 217; 42 L. J. Q. B. 137; *Stewart* v. *West Derby Burial Board*, *supra*).

See *post*, Form 16.

As to the right to burial fees under a Local Cemetery Act where a parish is divided up into ecclesiastical districts, see *Vaughan* v. *South Metropolitan Cemetery Co.*, [1860] 1 Johns. & H. 256; 30 L. J. Ch. 265; 3 L. T. N. S. 727; 7 Jur. N. S. 159; *Bowyer* v. *Stantial*, [1878] 3 Ex. D. 315.

Board may sell exclusive rights of burial vaults, and right to erect monuments.

XXXIII. Any burial board, under such restrictions and conditions as they think proper, may sell the exclusive right of burial, either in perpetuity or for a limited period, in any part of any burial ground provided by such board, and also the right of constructing any vault or place of burial with the exclusive right of burial therein in perpetuity or for a limited period, and also the right of erecting and placing any monument, gravestone, tablet, or monumental inscription in such burial ground, but there shall be payable to the incumbent or minister of the parish out of the fees or payments to be paid in respect of any rights acquired under this enactment in the consecrated part of such burial ground (in lieu of the fees or sums which he would have been entitled to on the grant of the like

15 & 16 Vict. c. 85. rights in the burial ground of his parish) such fees or sums as shall be settled and fixed by the vestry with the approval of the bishop of the diocese, or if no such fees or sums shall have been so settled then such fees as he would by law or custom have been entitled to on the grant of the like rights in the burial ground of his parish.

So much of this section as applies to fees payable to incumbents, the revision of such fees, and the substitution of fixed payments, is repealed as regards the City of London by 20 & 21 Vict. c. 35, s. 3.

As to the incumbent's rights apart from statute, *vide* Introduction, p. 21, *ante*. The rights here given, equally with those given by the last section, do not cover a right to fees paid by non-parishioners (*Wood* v. *Headingley-cum-Burley Burial Board*, [1892] 1 Q. B. 713).

The exclusive right of burial, the right of constructing a vault, &c., and the right of erecting a monument, &c., are three distinct rights, and a grant of the first will not include the third (*per* Bowen L.J., *McGough* v. *Lancaster Burial Board*, [1888] 21 Q. B. D., p. 328). The burial board can only grant such rights as are included in this section, and cannot grant a freehold estate (*S. C. per* Esher M.R. at p. 325).

The board has by s. 38 a general management, regulation, and control of the burial ground, and apparently, from the case above referred to, a grant under this section is subject to such rules as may be made by it. *Ashby* v. *Harris*, [1868] (L. R. 3 C. P. 523; 18 L. T. N. S. 719; 37 L. J. C. P. 280; M. C. 164) was disapproved of in that case. The true rule to be deduced from the two cases would seem to be that the board may make general regulations, but such regulations must not derogate from the actual rights granted. *Aliter* as to cemeteries (*Slattery* v. *Naylor*, [1888] 13 A. C. 446).

At common law the property in tombstones is in those who erected them, and they are the persons entitled to sue for any injury. Apparently this would also be the law as to tombstones in burial grounds. Strictly, the ordinary must give leave for the erection of tombstones in a churchyard, though

the consent of the parson is generally held sufficient. For burial grounds the consent of the board is enough. The board is the primary judge of the suitability of inscriptions proposed to be erected, but an appeal lies from their decision to the bishop. See s. 38 *infra*. 15 & 16 Vict. c. 85.

A grant under this section must be under seal. The rights given pass according to the limitations contained in it (*Matthews* v. *Jeffrey*, [1880] 6 Q. B. D. 290). In that case it was urged that a grant to E. M., her heirs and assigns, must be construed as a grant to her family by analogy to pews, and from the fact that such a grant was upheld in *Magnay* v. *Rector of St. Michael*, 1 Hagg. Eccl. Cases. It was held, however, that the grant must be strictly construed, and that the right descended to the heir-at-law. Fry J. expressed a doubt as to the effect of a grant to A. and his family, holding that it was not clear whether any member of the family could be buried under such a grant without the consent of the personal representative to whom the grant was made.

The right of the incumbent in London to fees given by this section is taken away by 20 & 21 Vict. c. 35, s. 3.

See *post*, Form 17.

XXXIV. Every burial board under this Act shall and may (without prejudice to the fees and payments herein specially provided for) fix and settle and receive such fees and payments in respect of interments in any burial ground provided by such board as they shall think fit, and also the sums to be paid for the exclusive right of burial, either in perpetuity or for a limited period, and also the right of erecting and placing any monument, gravestone, tablet, or monumental inscription in such burial ground, and every burial board, with the consent of the vestry, may from time to time revise and alter such fees, payments, and sums as aforesaid; and a table showing such fees, payments, and sums, and all other fees and payments in respect of interments in such ground, shall be printed and pub- Board to fix payments for interments in burial ground, and for exclusive right of burial vaults, and right to erect monuments.

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lished, and shall be affixed and at all times continued on some conspicuous part of such burial ground.

See *post*, scale of fees adopted by some boards, and scale of suggested fees, and also note to 56 & 57 Vict. c. 73, s. 7, *post*, p. 330.

By 18 & 19 Vict. c. 128, s. 7, the secretary of state's sanction is necessary for fixing any fees or payments as provided by this section.

As to the application of these fees see *R.* v. *Vestry of St. Marylebone*, [1895] 1 Q. B. 771.

Division of fees between incumbents of parishes and ecclesiastical districts.

XXXV. Where at the time of the discontinuance of interment in any burial ground the fees in respect of burials therein are divided between the incumbent of the parish and the incumbent of any district parish or other ecclesiastical district, each incumbent shall have the same proportion of the fees in the burial ground to be provided under this Act as he was entitled to in respect of interments in the old burial ground.

As to parishes in the City of London, see 20 & 21 Vict. c. 35, s. 3.

Fees payable to churchwardens and others for parochial purposes.

XXXVI. Where fees or any portion of fees payable on interments, or for any monument, gravestone, tablet, or monumental inscription, in the burial ground of any parish for which a burial ground is provided alone or jointly with any other parish or parishes under this Act, are by law or custom payable to the churchwardens of any parish, or to trustees or other persons, for or towards the payment of any annuity or stipend to the incumbent or minister, or any other parochial purpose, or the discharge of any debt or liability, such fees or portion of fees shall be payable in the burial ground to be provided as aforesaid for such parish under this Act, and shall be received by the burial board and paid to the parties entitled to receive the same; and where fees

or payments have been received on interments, or for any monument, gravestone, tablet, or monumental inscription, in the burial ground of any such parish by any such churchwardens, or by trustees or other persons, for the purpose of discharging any periodical payment or other liability, it shall be lawful for the burial board, upon the request of such churchwardens, trustees, or persons, to pay from time to time, out of the fees and monies received by them on account of such parish, such amount as may be necessary for discharging such periodical payment or liability. 15 & 16 Vict. c. 85.

Repealed as to the City of London by 20 & 21 Vict. c. 35, s. 3.

As to what constitutes an interment see *Scadding* v. *St. Pancras Burial Board*, [1889] W. N. 45; affirmed on appeal at p. 120.

The repair of a parish church has been held to be a parochial purpose within the meaning of this section (*Reg.* v. *Vestry of St. Marylebone*, [1895] 1 Q. B. 771).

Power to vestry, with consent of bishop, to revise the fees to incumbent, &c., or to substitute a fixed payment.

XXXVII. It shall be lawful for the vestry of any parish from time to time, if they think fit, with the consent of the bishop of the diocese, to revise and vary the fees payable to the incumbent, clerk, and sexton, and other persons and bodies respectively, under the provisions of this Act, or, with such consent as aforesaid, to substitute for the fees payable to such incumbent, clerk, and sexton, and other persons and bodies respectively, a fixed annual sum of such amount as to such vestry may seem just, to be payable by such periodical payments as such vestry may appoint, and in such last-mentioned case the fees which would otherwise be payable under this Act to the incumbent, clerk, and sexton, and such other persons and bodies respectively, shall be paid to the burial board, and such

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fixed payments as aforesaid shall be paid by such board.

Repealed as to the City of London by 20 & 21 Vict. c. 35, s. 3.

As to the power of borough councils to revise fees, see 17 & 18 Vict. c. 87, s. 10, *infra*, p. 165.

See for the combined effect of this section and the Local Government Act, 1894, s. 6, sub-s. 1 (a), and s. 7 of the latter Act.

Management to be vested in burial boards.

XXXVIII. The general management, regulation, and control of the burial grounds provided under this Act shall, subject to the provisions of this Act and the regulations to be made thereunder, be vested in and exercised by the respective burial boards providing the same; provided that any question which shall arise touching the fitness of any monumental inscription placed in any part of the consecrated portions of such grounds shall be determined by the bishop of the diocese.

See note to s. 33, *supra*. The regulations referred to here are those provided for by s. 44, *infra*, p. 136.

As to inscriptions in churchyards, see *Keet* v. *Smith*, [1876] L. R. 4 A. & E. 398; 1 P. D. 73; 33 L. T. N. S. 794; 45 L. J. P. C. 10; 24 W. R. 375, and Introduction, pp. 10 and 19, *ante*. As to inscriptions in consecrated portions of cemeteries, see 10 & 11 Vict. c. 65, s. 51.

Arrangements between the incumbents of parishes.

XXXIX. Where a burial ground is provided under this Act for the common use of two or more parishes, in case any question arise among the incumbents of such parishes as to the performance of the burial service by a chaplain to be paid by means of contributions from such incumbents, or deductions from fees or sums payable to them, or otherwise touching the performance of service in the consecrated part of such ground, the bishop of the diocese shall from time to time confirm any arrange-

ment which a majority or, in case of equal numbers, one-half of the incumbents shall approve, and such arrangement so confirmed shall be binding upon all the parties concerned. 15 & 16 Vict. c. 85.

XL. The provision of "The Cemeteries Clauses Act, 1847," with respect to the protection of the cemetery, shall be incorporated with this Act, and be applicable to any burial ground provided under this Act. Certain provisions of 10 & 11 Vict. c. 65, incorporated with this Act.

A penalty not exceeding 5*l.* for any damage or nuisance is imposed by this Act, 10 & 11 Vict. c. 65, ss. 58, 59 and 62 (see pp. 286, 288); and for the recovery of the penalty, clauses 145 to 149 and 151 to 160 of the Railway Clauses Act (8 & 9 Vict. c. 20), are incorporated, by which it is provided that every penalty may be recovered by summary proceedings before two justices. Any justice may issue a summons requiring the offender to appear; the summons may be served personally, or left at usual place of abode; and on proof by one credible witness on oath, conviction may follow to the extent of the penalty incurred, and such costs as justices shall think fit. In default of payment, a warrant of distress may be issued. The offender may be detained until return made to warrant of distress, or held to bail. If no sufficient distress can be had, the offender may be committed without bail for any term not exceeding the period set out in s. 5 of the Summary Jurisdiction Act, 1879. No distress shall be unlawful for want of form, but any defect to be satisfied by action on the case. Penalties must be sued for within six months. Any damage to be made good, in addition to the penalty to be determined by justices, and recoverable in like manner. Any witness may be summoned and examined on oath, and on neglect or refusal (reasonable expenses being paid), every such person shall forfeit a sum not exceeding 5*l.* Any officer or agent of the company (*i.e.*, burial board), or person called to his assistance, may seize any offender and convey him before a justice without warrant. No proceeding is to be quashed for want of form. Any party aggrieved may appeal to the next practicable court of quarter sessions, on giving security and due notice in writing to the party against whom the appeal shall be brought. Sections 146,

15 & 16 Vict. c. 85.

147, 151, and 155, and in part ss. 145 and 157 are repealed and their effect preserved by the Summary Jurisdiction Act, 1884.

Any person guilty of violent or indecent behaviour in any burial ground or who shall disturb any clergyman celebrating divine service therein is liable to a penalty of 5*l.* or two months' imprisonment, 23 & 24 Vict. c. 32, s. 2. And for damage to any monument or fence to imprisonment not exceeding six months, with or without hard labour, 24 & 25 Vict. c. 97, s. 39. By the Larceny Act (24 & 25 Vict. c. 96, s. 31), the stealing or breaking with intent, any lead or other metal in any burial ground is declared to be felony punishable as simple larceny, viz. (s. 4), penal servitude for three years or imprisonment not exceeding two years, with or without hard labour and solitary confinement, and if a male under 16—whipping.

Boards may make arrangements for facilitating the conveyance of bodies to burial grounds.

XLI. Any burial board may make such arrangements as they may from time to time think fit for facilitating the conveyance of the bodies of the dead from the parish or the place of death to the burial ground which shall be provided under this Act, or to any other place of burial, subject to the provisions of this Act and the regulations to be made thereunder, and it shall be lawful for any of the aforesaid cemetery companies to undertake any such arrangement, and to carry the same into effect, subject to the provisions and regulations as aforesaid.

As to the regulations under this Act, see s. 44, p. 136.

Places may be provided for reception of bodies until interment.

XLII. It shall be lawful for any burial board, with the approval of the vestry, and subject to the provisions of this Act and the regulations to be made thereunder, and for the churchwardens and overseers of the poor of any parish in the metropolis for which a burial board shall not have been appointed under this Act, by the direction of the vestry, and subject as aforesaid, to hire, take on lease, or otherwise to provide fit and proper places in which bodies may be received and taken

care of previously to interment, and to make arrangements for the reception and care of the bodies to be deposited therein, and for providing such places such burial boards may exercise the powers vested in them under this Act for providing burial grounds; and such churchwardens and overseers may exercise all such powers as, under the Act of the fifty-ninth year of King George the Third, chapter twelve, or otherwise, the churchwardens and overseers of any parish not having a workhouse might exercise for providing a workhouse for such parish. 15 & 16 Vict. c. 85.

59 Geo. III. c. 12 is now repealed by the Statute Law Revision Act, 1873, in so far as it is here referred to. See 18 & 19 Vict. c. 79, *post*, p. 470.

As to mortuaries see Introduction, p. 43, *supra*. The Public Health (London) Act, 1891, ss. 88, 89, and 91, empowers the local sanitary authorities in London to provide mortuaries.

The London County Council is empowered to provide mortuaries for the identification of the dead (s. 93).

Local authorities outside London are empowered to provide mortuaries for the reception of the dead by s. 141 of the Public Health Act, 1875. See also the Public Health (Interments) Act, 1879 (42 & 43 Vict. c. 31), *post*, p. 263.

As to powers of churchwardens and overseers to provide workhouses, see 43 Eliz. c. 2, s. 5, and 9 Geo. I. c. 7, s. 4, and the Acts amending them.

XLIII. The provisions hereinbefore contained for the appointment of burial boards shall not apply to any parish within the limits of the city of London and the liberties thereof; but it shall be lawful for the mayor, aldermen, and commons of the said city, in common council assembled, if and when they see fit so to do, to authorise and direct the commissioners of sewers of the city of London to exercise for the said city and liberties all the powers and authorities vested in burial boards The commissioners of sewers of the city of London to be a burial board for the parishes in the city and its liberties.

15 & 16 Vict. c. 85.

under this Act; and thereupon such commissioners shall have and exercise for and on behalf of the said city and liberties all such powers and authorities as are hereby vested in the burial board for any parish, or which might be exercised by such board with the approval of the vestry; but the expenses to be incurred by such commissioners in providing and laying out any burial ground or burial grounds under this Act, and building the necessary chapel or chapels therein, shall not exceed such sum as the said mayor, aldermen, and commons in common council assembled shall authorise to be expended for this purpose; and the money required for defraying the expenses incurred under this Act by the said commissioners shall be charged upon and payable out of the consolidated rate authorised to be made by "The City of London Sewers Act, 1848," or any monies applicable for defraying the expenses by the said Act charged upon or payable out of such rate; and the income of any burial ground provided under this Act by such commissioners, which if such ground had been provided by a burial board for any parish would be applicable in aid of the rate for the relief of the poor of such parish, shall be applicable in aid of the said consolidated rate; and the provisions contained in "The City of London Sewers Act, 1848," for the purpose (as therein expressed) of enabling the said commissioners to effect the purchases therein authorised, shall be applicable for the purpose of enabling the said commissioners to purchase land for the purposes of this Act; and the powers for and auxiliary to the sale and disposal of land given or expressed to be given by "The City of London Sewers Act, 1848," and "The City of London Sewers Act, 1851," with respect to land purchased by the said commissioners for any of

the purposes mentioned in such last-mentioned Act, and deemed by them unnecessary for such purposes, shall be applicable with respect to any land purchased by the said commissioners for the purposes of this Act which may not appear to them to be wanted for such purposes; and all the provisions of the said City of London Sewers Act applicable to the exercise of the powers vested in the said commissioners shall be applicable to and for the purposes of this Act, as if the powers which under this Act may become vested in such commissioners had been powers vested in them under the said "City of London Sewers Act, 1848;" provided that it shall be lawful for the said mayor, aldermen, and commons to appoint any incumbent or incumbents of any parish or parishes within the said city or liberties to act with the said commissioners for the purposes of this Act. 15 & 16 Vict. c. 85.

By the City Sewers Act, 1851 (14 & 15 Vict. c. xci.), after any burial ground within the City shall have ceased to be used for interments, commissioners, with consent of bishop, may arrange with incumbent and churchwardens for appropriation thereof for public improvements (s. 32). Relatives of persons interred may, with consent of incumbent, under regulations of commissioners, remove any body from such ground to any cemetery without the City without faculty (s. 33). Commissioners, with consent of bishop, may cause any closed burial ground to be planted, paved, or otherwise covered, and lower surface to adjoining level by carrying away soil thereof (s. 34), provided graves be disturbed as little as possible; and relatives may cause remains of bodies interred to be removed as bishop shall direct, at expense of commissioners, not exceeding 10*l.* (s. 35). If soil be planted or paved by commissioners, relatives may remove any tomb at their own expense (s. 36).

Under the Union of Benefices Act (23 & 24 Vict. c. 142, s. 17), nothing shall legalise the sale or letting of any burial ground; and the remains of bodies under any church which

15 & 16 Vict. c. 85.

may be sold are to be removed, at the cost of the ecclesiastical commissioners, into some consecrated burial ground, "or to some portion of the vaults of the same church as may be separated and set apart for a burial place," also any monuments, to the church of the united parishes; notice to be given by the churchwardens to the friends of persons so interred of intention to remove such remains and monuments, and relatives may undertake such removal, if they prefer, at the like cost not exceeding 10*l.*

This Act was amended, so far as it relates to the City of London and the liberties thereof, by 20 & 21 Vict. c. 35, *post*, p. 190.

Secretary of state may make regulations as to burial grounds, &c.

XLIV. It shall be lawful for one of Her Majesty's principal secretaries of state from time to time to make such regulations in relation to the burial grounds and places for the reception of bodies previously to interment which may be provided under this Act as to him may seem proper, for the protection of the public health and the maintenance of public decency, and the burial boards and all other persons having the care of such burial grounds and places for the reception of bodies shall conform to and obey such regulations.

For regulations issued by virtue of this section, see *post.* See s. 38, *ante*, p. 130, and s. 41, *ante*, p. 132.

As to the powers of the secretary of state to direct inspection of burial grounds, and to make regulations thereon, see 18 & 19 Vict. c. 128, s. 8, *post*, p. 173.

As to regulations to be made by order in council for protection of health and decency in respect of burials in common graves, see 20 & 21 Vict. c. 81, s. 10, p. 211.

Brompton Cemetery vested in commissioners of works.

XLV. *And whereas the General Board of Health have, under the powers of the said Metropolitan Interments Act*, 1850, *taken proceedings for the purchase of the cemetery of the West of London and Westminster Cemetery Company (commonly called the Brompton Cemetery), and the amount of the purchase-money has been ascertained*

by arbitration, but such purchase may not have been completed at the time of the passing of this Act: 15 & 16 Vict. c. 85.

In case at the time of the passing of this Act the said cemetery has not been conveyed to the General Board of Health, the rights and obligations of the General Board of Health with reference to the purchase of the said cemetery shall upon the passing of this Act become transferred to the Commissioners of *Her Majesty's* Works *and Public Buildings;* and in case the said cemetery shall be conveyed to them by virtue of the transfer hereby made of such rights and liabilities, then immediately upon such cemetery being so conveyed, *or in case at the time of the passing of this Act the said cemetery has been conveyed to the General Board of Health, then from and after the passing of this Act* the said cemetery shall, without any further conveyance, become vested in the said Commissioners of *Her Majesty's* Works *and Public Buildings and their successors,* in the like corporate capacity in which any lands, tenements, or hereditaments are vested in them under the Act of this last session of Parliament, chapter forty-two, but subject to the rights to graves, vaults, and monuments subject to which such cemetery may have been conveyed to such commissioners or to the General Board of Health, as the case may be, and subject to the powers and for the purposes hereinafter mentioned.

The words in italics are repealed by the Statute Law Revision Act, 1892.

XLVI. And whereas by an Act of the last session of Parliament, chapter eighty-nine, the Commissioners of Her Majesty's Treasury are authorised to cause to be issued and advanced to the General Board of Health, out of the produce of the consolidated fund of the United Money authorised to be advanced under 14 & 15 Vict. c. 89, may be applied

15 & 16 Vict. c. 85. in completing the purchase of the Brompton Cemetery.

Kingdom, a sum or sums not exceeding in the whole one hundred and thirty-seven thousand pounds, to be applied to the purposes to which money borrowed by the said Metropolitan Interments Act, 1850, *is by the said Act made applicable:*

It shall be lawful for the Commissioners of Her Majesty's Treasury to cause to be advanced or issued to and applied by the Commissioners of Her Majesty's Works and Public Buildings, out of the said consolidated fund, such part of the said sum of one hundred and thirty-seven thousand pounds as the said Commissioners of Her Majesty's Treasury may think fit for the completion of the purchase of the said Brompton Cemetery, in case such purchase shall not have been completed at the time of the passing of this Act, and for the care and management of the said cemetery; and the said Commissioners of the Treasury may also cause to be issued and advanced and applied such part of the said sum of one hundred and thirty-seven thousand pounds as the said Commissioners of the Treasury shall think fit in discharge of any liabilities of the said General Board of Health incurred under the powers of the said Metropolitan Interments Act, 1850, *without requiring in the cases aforesaid any mortgage to be made for such advances.*

This section is repealed by the Statute Law Revision Act, 1892.

Provision for winding up the West of London and Westminster Cemetery Company.

XLVII. After payment to the said West of London and Westminster Cemetery Company, either by the General Board of Health or by the Commissioners of Her Majesty's Works and Public Buildings, of the purchase or consideration money for the said Brompton Cemetery, the said West of London and Westminster Cemetery Company shall continue only for the purpose of winding up the

affairs and realising and distributing the assets thereof, and satisfying any debts or engagements to or by the said company, and for the enforcement by law or in equity of such debts or engagements respectively, and the said company, as soon as conveniently may be after the payment of such purchase or consideration money, shall convert into money, by sale or otherwise, the effects of the said company, and get in the debts and assets thereof, and distribute and apportion the monies thence arising, together with such purchase or consideration money, after satisfying all the debts, engagements, and liabilities of the said company, to and among the several proprietors thereof, according to their respective shares and interests therein; and from and immediately after such distribution and apportionment the said company shall be dissolved, and the receipt of every person who for the time being would have been entitled to give an effectual discharge for any dividends which might have become payable in respect of any share in the said cemetery, or in the capital stock of the said company, in case the said Metropolitan Interments Act and this Act had not been passed, for the proportion of the monies which under this provision shall become payable in respect of such share, shall be an effectual discharge to the said company and the directors thereof for the same. 15 & 16 Vict. c. 85.

This section is repealed by the Statute Law Revision Act, 1875.

XLVIII. The said Commissioners of Works *and Public Buildings* shall and may, in case the said Brompton Cemetery be vested in them by or under this Act, sell and dispose of the same or any part thereof, subject to the rights affecting the same, as the *Commissioners of Her Majesty's* Treasury may direct; and in the meantime, until such sale, the secretary of state may and Brompton Cemetery may be sold by direction of the Treasury, and in the meantime used for interment.

15 & 16 Vict. c. 85.

shall permit the same to be used for the purposes of interment, upon such terms and conditions as he shall think fit; and the residue of the monies arising from the sale and disposal of the said cemetery, or any part thereof, and in respect of the interments therein, after defraying the expenses incident to such sale and to the care and management of the cemetery, until the whole thereof shall be sold and disposed of, shall be paid to the Metropolitan Interments Repayments Account mentioned in the said Act of the last session of Parliament, to be carried to the said consolidated fund.

The words in italics are repealed by the Statute Law Revision Act, 1892.

Limiting the compensation fee to be payable on pauper burials in cemeteries.

XLIX. Where any body is buried in any of the cemeteries mentioned in Schedule (B) to this Act, at the expense of any union or parish, the fee or sum to be paid or payable on the interment of such body, or otherwise in respect thereof, to the incumbent of the parish or ecclesiastical district from which such body is removed for interment, shall not exceed the sum of one shilling, or where the incumbent now receives in respect of the like burial in the ground of his parish more than one shilling shall not exceed the sum so now received, and in no case shall exceed two shillings and sixpence; and no other fee or sum whatsoever shall be payable in respect of such interment, to or for the use of any person as an officer of such parish or district, or for or on behalf of such parish or district, anything in any Act mentioned in the said Schedule (B) or any other Act notwithstanding.

This section is extended to all cemeteries already established and hereafter to be established under the authority of Parliament in like manner as it applies to the cemeteries mentioned

in Schedule B. See 16 & 17 Vict. c. 134, s. 7, *post*, p. 153. See also 20 & 21 Vict. c. 35, s, 1, and Schedule. 15 & 16 Vict. c. 85.

Incumbents' compensation to be payable to the churchwardens where the fees on burials are now paid to them, and the incumbents are not entitled.

L. Where under any local Act fees on interments in any burial ground of any parish in the metropolis are payable to the churchwardens of such parish, or to any trustees or other persons, for the purpose of enabling them to pay an annuity or stipend to the incumbent or minister, the fees which under this Act, or any Act relating to any cemetery company, would, on the interment in the cemetery of any company of any body brought from such parish, be payable to such incumbent or minister, shall be payable to the said churchwardens, trustees, or persons, and any surplus of such fees which may remain in their hands after payment of such annuity or stipend shall be paid to such incumbent or minister.

This does not apply to parishes in the City of London. See 20 & 21 Vict. c. 35, s. 3, *infra*, p. 195.

Power for incumbent or churchwardens to convey chapel.

LI. Where any burial ground in which interment is discontinued under this Act belongs to any parish other than the parish within which the same is locally situate, it shall be lawful for the incumbent and churchwardens of the parish to which such burial ground belongs, with the consent of the vestry, or persons possessing the powers of vestry for ecclesiastical purposes of or in such parish, and of the bishop of the diocese, to convey any chapel belonging to such parish, and situate in or attached to such burial ground, and the site thereof, to any persons named by the incumbent and churchwardens of the parish within which the same is situate, with the consent of the vestry, or persons possessing the powers of vestry of or in such parish for ecclesiastical purposes, and of the said bishop, and upon such trusts for such last-mentioned parish, and subject to such conditions to

15 & 16 Vict. c. 85.

be performed on behalf of such parish, and with such provision for the appointment of new trustees, as to the said bishop may seem proper; and such conveyance shall be effectual to pass all the estate and interest vested in any persons in trust or in behalf of the parish to which such chapel and the site thereof belong; and after the execution of such conveyance all obligation on such last-mentioned parish, or any trustees or others on behalf thereof, to repair such chapel, or to pay any stipend to the minister thereof, or otherwise in relation to or in connection with such chapel, shall cease.

Power to purchase a closed burial ground situated in a parish to which it does not belong, is given to such parish by 20 & 21 Vict. c. 81, s. 8, *post*, p. 209.

Interpretation of terms.

LII. In this Act the following words and expressions shall have the several meanings hereby assigned to them, unless there be something in the subject or context repugnant to such construction; that is to say,

"Parish" shall mean every place having separate overseers of the poor, and separately maintaining its own poor:

"Ratepayers" shall mean the persons for the time being assessed to and paying rates for the relief of the poor of the parish:

"Incumbent" and "minister" shall, in respect of any fee made payable to an incumbent or minister under this Act, mean the clergyman who would have been entitled to the fee had the body been buried in the churchyard or burial ground of the parish from which it came, or in the burial ground of the ecclesiastical district in case such district has a burial ground at the passing of this Act, and if any difference shall arise between two or more persons severally

claiming to be the incumbent or minister under this provision, such difference shall be determined by the bishop of the diocese: 15 & 16 Vict. c. 85.

"Churchwardens" shall mean also chapelwardens, or other persons discharging the duties of churchwardens:

"Overseers" shall mean also any person authorised and required to make and collect or cause to be collected the rate for the relief of the poor of the parish, and acting instead of overseers of the poor:

"Vestry" shall mean the inhabitants of the parish lawfully assembled in vestry, or for any of the purposes for which vestries are holden, except in those parishes in which there is a select or other vestry *elected under an Act of the fifty-ninth year of King George the Third, chapter twelve, "to amend the laws for the relief of the poor," or* elected under an Act passed in the second year of King William the Fourth, chapter sixty, "for the better regulation of vestries, and for the appointment of auditors of accounts, in certain parishes of England and Wales," or elected under the provisions of any local Act of Parliament for the government of any parish by vestries, in which parishes it shall mean such select or other vestry:

"Clerk" shall mean the clerk appointed pursuant to this Act by any burial board appointed under this Act.

The words in italics are repealed by the Statute Law Revision Act, 1875.

The definition of "parish" does not exclude such parishes as do not separately maintain their own poor. See *R.* v.

15 & 16 Vict. c. 85.

Sudbury Burial Board, [1858] E. B. & E. 264; 31 L. T. 161; 27 L. J. Q. B. 232; 4 Jur. N. S. 948, and *Hornby* v. *Toxteth Park*, [1862] 8 L. T. N. S. 143; 31 L. J. Ch. 643; 8 Jur. N. S. 531. By s. 5 of the Interpretation Act, 1889 (52 & 53 Vict. c. 63), in every Act passed after 1866, whether before or after the passing of the Interpretation Act, the expression "parish" shall, unless the contrary intention appears, mean, as respects England and Wales, a place for which a separate poor rate is or can be made, or for which a separate overseer is or can be appointed.

By 20 Vict. c. 19, s. 1, *infra*, p. 474, every place entered separately in the report of the Registrar-General on the last census, which is or is reputed to be extra-parochial, shall, for the purposes of burial of the dead, be deemed a parish.

As to extra-parochial places see also 31 & 32 Vict. c. 122, s. 27.

As to what is included in "vestry," see *R.* v. *Peters*, [1856] 6 E. & B. 225; 25 L. J. Q. B. 271; 2 Jur. N. S. 424, where it was held that a vestry established by a private Act of Parliament for general purposes could elect a burial board; see also *In re Sunderland Burial Board*, [1856] 6 E. & B. 226; 25 L. J. Q. B. 271; *Ex parte Urquart, In re Burial Board of Liverpool*, 26 L. J. Q. B. 213; *R.* v. *Gladstone*, [1857] 7 E. & B. 575; 26 L. J. Q. B. 213; 3 Jur. N. S. 441. See also s. 75 of the Local Government Act, 1894, *infra*.

As to the meaning of "incumbent" under the Burials Acts see *Hornby* v. *Toxteth Park*, *supra*; *Stewart* v. *West Derby Burial Board*, [1886] 34 Ch. D. 314; *Day* v. *Barnsley Burial Board*, [1865] 6 New Reports 156, *sub nom. Day* v. *Peacock*, 12 L. T. N. S. 571; 18 C. B. N. S. 702; 11 Jur. N. S. 428; 34 L. J. C. P. 225.

Definition of "the metropolis."

LIII. For the purposes of this Act, the expression "the metropolis" shall be construed to mean and include the cities and liberties of London and Westminster, the borough of Southwark, and the parishes, precincts, townships, and places mentioned in the Schedule (A) to this Act.

Saving rights of

LIV. Provided always, that nothing in this Act contained shall extend to take away, diminish, alter,

or prejudice any of the rights, powers, or authorities vested in any of the cemetery companies incorporated under the several Acts mentioned in the said Schedule (B) to this Act, but all such rights, powers, and authorities shall be as good, valid, and effectual as if this Act had not passed. 15 & 16 Vict. c. 85. cemetery companies.

SCHEDULE (A).

The city of London and the liberties thereof, the Inner Temple and Middle Temple, and all other places and parts of places contained within the exterior boundaries of the liberties of the city of London.

In Middlesex.

The city and liberties of Westminster.

The parishes of St. Margaret and St. John the Evangelist.
The parish of St. Martin in the Fields.
The parish of St. George, Hanover Square.
The parish of St. James.
The parish of St. Mary-le-strand, as well within the liberty of Westminster as within the Duchy liberty.
The parish of St. Clement Danes, as well within the liberty of Westminster as within the Duchy liberty.
The parish of St. Paul, Covent Garden.
The parish of St. Anne, Soho.
Whitehall Gardens (whether the same be parochial or extra-parochial).
Whitehall (whether the same be parochial or extra-parochial).
Richmond Terrace (whether the same be parochial or extra-parochial).
The close of the collegiate church of St. Peter.

The parishes of St. Giles in the Fields and St. George, Bloomsbury.
The parishes of St. Andrew, Holborn, and St. George the Martyr.
The liberty of Hatton Garden, Saffron Hill, and Ely Rents.

15 & 16 Vict. c. 85.

The liberty of the Rolls.
The parish of St. Pancras.
The parish of St. John, Hampstead.
The parish of St. Marylebone.
The parish of Paddington.
The precinct of the Savoy.
The parish of St. Luke.
The liberty of Glasshouse Yard.
The parish of St. Sepulchre.
The parish of St. James, Clerkenwell, including both districts of St. James and St. John.
The parish of St. Mary, Islington.
The parish of St. Mary, Stoke Newington.
The Charterhouse.
The parish of St. Mary, Whitechapel.
The parish of Christchurch, Spitalfields.
The parish of St. Leonard, Shoreditch.
The liberty of Norton Folgate.
The parish of St. John, Hackney.
The parish of St. Matthew, Bethnal Green.
The hamlet of Mile End Old Town.
The hamlet of Mile End New Town.
The parish of St. Mary, Stratford Bow.
The parish of Bromley St. Leonard.
The parish of All Saints, Poplar.
The parish of St. Anne, Limehouse.
The hamlet of Ratcliffe.
The parish of St. Paul, Shadwell.
The parish of St. George in the East.
The parish of St. John, Wapping.
The liberty of East Smithfield.
The precinct of St. Catherine.
The liberty of Her Majesty's Tower of London, consisting of
The liberty of the Old Artillery Ground.
The parish of Trinity, Minories.
The Old Tower precinct.
The precinct of the Tower Within.
The precinct of Wellclose.
The parish of Kensington.
The parish of St. Luke, Chelsea.

The parish of Fulham.
The parish of Hammersmith.
Lincoln's Inn.
New Inn.
Gray's Inn.
Staple Inn.
That part of Furnival's Inn in the county of Middlesex.
Ely Place.
The parish of Willesden.

IN KENT.

The parish of St. Paul, Deptford.
The parish of St. Nicholas, Deptford.
The parish of Greenwich.
The parish of Woolwich.
The parish of Charlton.
The parish of Plumstead.

IN SURREY.

The borough of Southwark.

The parish of St. George the Martyr.
The parish of St. Saviour.
The parish of St. John, Horsleydown.
The parish of St. Olave.
The parish of St. Thomas.

The parish of Battersea (except the hamlet of Penge).
The parish of Bermondsey.
The parish of Camberwell.
The parish of Clapham.
The parish of Lambeth.
The parish of Newington.
The parish of Putney.
The parish of Rotherhithe.
The parish of Streatham.
The parish of Tooting.
The parish of Wandsworth.
The parish of Christchurch.
The Clink Liberty.
The hamlet of Hatcham in the parish of Deptford.

15 & 16 Vict. c. 85. This Schedule is the same as the Schedules (A) (B) and (C) to the Metropolis Management Act, 1855 (18 & 19 Vict. c. 120), except that the Schedules to the latter Act include Eltham, Lee, Kidbrook, Lewisham, and the hamlet of Penge, and exclude Willesden.

SCHEDULE (B).

The several CEMETERIES established under the several ACTS hereinafter mentioned; viz.—

2 & 3 Will. IV. c. cx. An Act for establishing a general cemetery for the interment of the dead in the neighbourhood of the metropolis:

6 & 7 Will. IV. c. cxxix. An Act for establishing a cemetery for the interment of the dead southward of the metropolis, to be called the "South Metropolitan Cemetery:"

6 & 7 Will. IV. c. cxxxvi. An Act for establishing cemeteries for the interment of the dead northward, southward, and eastward of the metropolis, by a company to be called "The London Cemetery Company:"

1 Vict. c. cxxx. An Act for establishing a cemetery for the interment of the dead westward of the metropolis, by a company to be called "The West of London and Westminster Cemetery Company:" and

4 & 5 Vict. c. lxiii. An Act to establish a general cemetery for the interment of the dead in the parishes of St. Dunstan, Stepney, and Saint Leonard, Bromley, in the county of Middlesex.

The Victoria Park Cemetery in the parish of Saint Matthew, Bethnal Green, in the county of Middlesex: and

The Abney Park Cemetery in the parish of Saint Mary, Stoke Newington, in the county of Middlesex.

16 & 17 VICT. C. 134.

An Act to amend the Laws concerning the Burial of the Dead in England beyond the Limits of the Metropolis, and to amend the Act concerning the Burial of the Dead in the Metropolis. 16 & 17 Vict. c. 134.

[20th August, 1853.]

WHEREAS an Act was passed in the last session of Parliament "to amend the Laws concerning the Burial of the Dead in the Metropolis," and it is expedient to make better provision for and in relation to burials beyond the limits of the said Act: be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows: 15 & 16 Vict. c. 85.

The preamble was repealed by the Statute Law Revision Act, 1892.

On representation of secretary of state, Her Majesty in council may restrain the opening of new burial grounds, and order discontinuance of burials in specified places.

I. In case it appear to Her Majesty in council, upon the representation of one of Her Majesty's principal secretaries of state, that for the protection of the public health the opening of any new burial ground in any city or town, or within any other limits, save with the previous approval of one of such secretaries of state, should be prohibited, or that burials in any city or town, or within any other limits, or in any burial grounds or places of burial, should be wholly discontinued, or should be discontinued subject to any exception or qualification, it shall be lawful for Her Majesty, by and with the advice of her privy council, to order that no

16 & 17 Vict. c. 134.

new burial ground shall be opened in such city or town, or within such limits, without such previous approval, or (as the case may require) that after a time mentioned in the order burials in such city or town, or within such limits, or in such burial grounds or places of burial, shall be discontinued wholly, or subject to any exceptions or qualifications mentioned in such order, and so from time to time as circumstances may require: Provided always, that notice of such representation, and of the time when it shall please Her Majesty to order the same to be taken into consideration by the privy council, shall be published in the *London Gazette*, and shall be affixed on the doors of the churches or chapels of, or on some other conspicuous places within, the parishes affected by such representation, one month before such representation is so considered: Provided also, that no such representation shall be made in relation to the burial ground of any parish until ten days previous notice of the intention to make such representation shall have been given to the incumbent and the vestry clerk or churchwardens of such parish.

The section giving the same powers as regards the metropolis is s. 2 of 15 & 16 Vict. c. 85, *ante*, p. 93. Under the order in council closing, under this section, the churchyard of Woollavington, burials were to be discontinued except "in such reserved grave spaces in the churchyard as have never before been buried in, burials may be allowed of such members of the families of parishioners to whom they may be allotted as can be buried at or below the depth of five feet." It was held by the Court of Arches that a faculty for the reservation of space in the churchyard for exclusive burial could be granted to a living non-parishioner, a member of the family of a parishioner (*In re Sargent*, [1890] 15 P. D. 168).

As to the property in a closed churchyard or burial ground, and the profits of money paid as compensation if the churchyard or burial ground is purchased for other purposes, see

notes to s. 2 of 15 & 16 Vict. c. 85, and the cases there cited, *ante*, p. 94. 16 & 17 Vict. c. 134.

As to maintenance and repair of closed burial grounds, see 18 & 19 Vict. c. 128, s. 18, *infra*, p. 185.

As to orders in council regulating burials in vaults and preventing them becoming dangerous to health, see 20 & 21 Vict. c. 81, s. 23, *infra*, p. 220, and 22 Vict. c. 1, s. 1, *infra*, p. 227.

As to restriction upon building vaults under any church or within the walls, see s. 343, and Schedule V. part 3 of the Public Health Act, 1875 (38 & 39 Vict. c. 55).

The ten days' notice to be given by this section will be given now in rural parishes to the parish council instead of the churchwardens. See Local Government Act, 1894, ss. 6 (1) and 52 (5).

Order not to extend to burial grounds of Quakers or Jews, unless expressly included.

II. No such order in council as aforesaid shall be deemed to extend to any burial ground of the people called Quakers, or of the persons of the Jewish persuasion, used solely for the burial of the bodies of such people and persons respectively, unless the same be expressly mentioned in such order; and nothing in this Act shall prevent the burial in any such burial ground in which for the time being interment is not required to be discontinued of the bodies of such people and persons respectively; and no such order in council as aforesaid shall be deemed to extend to any non-parochial burial ground being the property of any private person, unless the same be expressly mentioned in such order.

Burial not to take place after order in council for discontinuance.

III. It shall not be lawful, after the time mentioned in any such order in council for the discontinuance of burials, to bury the dead in any church, chapel, churchyard, or burial place, or elsewhere within the parts to which such order extends, or in the burial grounds or places of burial (as the case may be) in which burials have by any such order been ordered to be discontinued, except as in this Act or in such order excepted; and every person who shall, after such time as aforesaid,

16 & 17 Vict. c. 134.

bury any body, or in anywise act or assist in the burial of any body, contrary to this enactment, shall be guilty of a misdemeanor.

By 18 & 19 Vict. c. 128, s. 2, any person wilfully and knowingly burying a body where burials have been ordered to be discontinued, can be proceeded against summarily and fined 10*l.* Though a church be closed for burial, a faculty may be granted for interring therein an urn containing human ashes (*In re Kerr*, [1894] P. 284).

Saving of certain rights to bury in vaults, &c.

IV. Provided always, that, notwithstanding any such order in council, where by virtue of any faculty legally granted, or by usage or otherwise, there is at the time of the passing of this Act any right of interment in or under any church or chapel affected by such order, or in any vault of any such church or chapel, or of any churchyard or burial ground affected by such order, and where any exclusive right of interment in any such burial ground has been purchased or acquired before the passing of this Act, it shall be lawful for one of Her Majesty's principal secretaries of state, from time to time, on application being made to him, and on being satisfied that the exercise of such right will not be injurious to health, to grant licence for the exercise of such right during such time and subject to such conditions and restrictions as such secretary of state may think fit, but such licence shall not prejudice or in anywise affect the authority of the ordinary, or of any other person who, if this Act had not been passed, might have prohibited or controlled interment under such right, nor dispense with any consent which would have been required, nor otherwise give to such right any greater force or effect than the same would have had if this Act had not been passed.

An application under this section should not be deferred until a death has taken place, as then there will be insufficient

time to inquire into the circumstances. The best time for making the application is immediately after the order has been made. 16 & 17 Vict. c. 134.

See the notes to the corresponding provision in s. 6 of 15 & 16 Vict. c. 85, *ante*, p. 97.

V. The provisions of this Act shall not extend to authorise the discontinuance of burials, or to prevent the burial of the body of any person, in any cemetery established under the authority of any Act of Parliament, or in any burial ground or cemetery to be hereafter provided with the approval of one of Her Majesty's principal secretaries of state, as herein mentioned. Not to extend to cemeteries established by Act of Parliament, or new burial grounds, &c.

There had been considerable difference of opinion as to whether the expressions "cemetery" and "burial ground," used in this section, are synonymous. It has, however, been held that, whether or not, a burial ground established under any of the Church Building Acts is not exempted by this section. See *Reg.* v. *Justices of Manchester*, [1855] 5 E. & B. 702; 2 Jur. N. S. 182; 25 L. J. M. C. 45, but see also *Hornby* v. *Toxteth Park*, [1862] 31 L. J. Ch. 643; 8 Jur. N. S. 531.

VI. Where by any such order in council as aforesaid it is ordered that no new burial ground shall be opened in any city or town, or within any limits therein mentioned, without the previous approval of one of Her Majesty's principal secretaries of state, no new burial ground or cemetery (parochial or non-parochial) shall be provided and used in such city or town, or within such limits, without such previous approval. New burial grounds not to be opened contrary to order in council.

When any new site has been selected, an ordinary letter stating the fact and requesting approval of the same should be addressed to the Home Secretary. As to sites for churches and burial grounds and for their enlargement, see 56 Geo. III. c. 141, and 58 Geo. III. c. 45, and 59 Geo. III. c. 134; 3 Geo. IV. c. 72; 30 & 31 Vict. c. 133; 31 & 32 Vict. c. 47.

VII. All the provisions contained in the said Act of the last session of Parliament, chapter eighty-five, Certain provisions

16 & 17 Vict. c. 134. of Metropolitan Burial Act, 15 & 16 Vict. c. 85, extended to parishes, &c., not in the metropolis.

"to amend the Laws concerning the Burial of the Dead in the Metropolis," from section ten to section forty-two (both inclusive) of the said Act, and also in sections forty-four, fifty, fifty-one, and fifty-two of the said Act, shall extend and be applicable to and in respect of any parish not in the metropolis, and for the purpose of providing a burial ground for any such parish, or otherwise providing for the interment of the bodies of persons who would have had right of interment in the burial ground of any such parish, and generally in relation to every such burial ground to be so provided, and the fees and payments to be received in respect of interment or other rights therein and otherwise, as if such sections were re-enacted in this Act, and the words "in the metropolis," wherever they occur in such sections, or any of them, were omitted; and section forty-nine of the said Act shall extend to all cemeteries already established and hereafter to be established under the authority of Parliament in like manner as to those mentioned in Schedule (B) to that Act, and as respects the cemeteries to which such section is hereby extended, the same shall also apply in respect of burials at the expense of any hospital or infirmary in like manner as to burials at the expense of a union or parish: Provided always, that in all cases in which any burial board shall provide a new burial ground under the said Act of the last session of Parliament or under this Act, that new burial ground shall be divided into consecrated and unconsecrated parts, in such proportions, and the unconsecrated part thereof shall be allotted in such manner and in such portions, as may be sanctioned by one of Her Majesty's principal secretaries of state; and when any burial board shall by virtue of section thirty of the said Act build on any burial ground provided by such

Any burial board building a chapel for burials according to the rites of the Church of England, also to build a chapel for persons not being members of the Church of England.

board a chapel for the performance of the burial service according to the rites of the *united* Church of England *and Ireland*, they shall also build, on the portion of such ground set apart for burials otherwise than according to the rites of the said Church, such chapel accommodation for the performance of burial service by persons not being members of the said Church as may be approved by one of Her Majesty's secretaries of state. 16 & 17 Vict. c. 134.

The Archbishops and Lord Chancellor may, with consent of the Privy Council, fix a table of fees to be paid on the consecration of burial grounds, 30 & 31 Vict. c. 135. See list of fees, *infra*.

Where a new burial ground is provided under the Burial Acts unless provided under s. 10 of 18 & 19 Vict. c. 128, a chapel may be built on the consecrated portion and another upon the unconsecrated portion of the ground; where a chapel is erected upon the consecrated portion another must be erected on the unconsecrated portion, unless it be deemed unnecessary by three-fourths of the vestry, and by the secretary of state (see 18 & 19 Vict. c. 128, ss. 10 and 14, *infra*, pp. 175 and 181).

VIII. All burials within any burial ground provided under the said Act of the last session of Parliament or this Act shall be registered in a register book to be provided by the burial board providing such ground (or, where the same is provided by the commissioners of sewers of the city of London, then by such commissioners), and kept for that purpose according to the laws in force by which registers are required to be kept by the rectors, vicars, or curates of parishes or ecclesiastical districts in England; and such register book shall be so kept by some officer appointed by the said board or the commissioners to that duty; and in such register books shall be distinguished in what parts of the burial ground, and where the whole of such burial ground is not consecrated for interments according to the rites of Register of burials to be kept in every ground provided under 15 & 16 Vict. c. 85, or under this Act.

16 & 17 Vict. c. 134. the *united* Church of England *and Ireland*, whether in the portion so consecrated or in the portion not so consecrated the several bodies (the burials of which are entered in such register books) are buried; and in case such burial ground has been provided for more than one parish, such register shall be kept or indexed so as to facilitate searches for entries in such books in respect of bodies from the several parishes; and such register books, or copies or extracts therefrom, shall be received in all courts as evidence of the burials entered therein, and copies or transcripts of such register books, verified and signed by such officer as aforesaid, shall be from time to time sent to the registrar of the diocese, to be kept with the copies of the other register books of the parishes within such diocese; and the said register books, so far as respects searches to be made therein and copies and extracts to be taken therefrom, shall be subject to the same regulations as are provided by an Act passed in the seventh year of King William the Fourth, intituled "An Act for registering Births, Deaths, and Marriages in England," so far as such regulations relate to register books of burials kept by any rector, vicar, or curate.

Entries to be evidence.

6 & 7 Will. IV. c. 86.

In *all* burial grounds registers are to be likewise kept, subject to similar provisions (27 & 28 Vict. c. 97; and 37 & 38 Vict. c. 88). Under this latter Act, s. 17, which was partially repealed and re-enacted by the Coroners Act, 1887, s. 18 (6), a coroner after inquest may authorise burial before registry and before verdict by order to the person having charge of the funeral, and upon requisition, or notice, the registrar must give a certificate of registration; which order or certificate is to be delivered to the person performing the burial service under penalty of 40*s.*; and if no such order or certificate is so delivered, notice must be given by the person officiating within seven days to the registrar under penalty of

10l. (and ss. 18 and 19 contain directions as to certificates in the case of still-born children, &c.). Such coroner's order or registrar's certificate must now be delivered to the person responsible for the burial—instead of to the person who buries or performs the service—who in the absence of such certificate is to give the prescribed notice to the registrar under the like penalty. The incumbent or registrar is also required to register burials conducted without the Church Service on receipt of a certificate (43 & 44 Vict. c. 41, ss. 10, 11, pp. 245 and 246, *infra*). 16 & 17 Vict. c. 134.

The keeping of registers by rectors, vicars, or curates of parishes or ecclesiastical districts in England is regulated by 52 Geo. III. c. 46; 11 Geo. IV. & 1 Will. IV. c. 66; and 6 & 7 Will. IV. c. 86, s. 1.

IX. Nothing in this Act, except the provisions in sections seven and eight, shall extend to any parish in the "metropolis," as defined by the said Act of the last session, or otherwise affect the provisions of that Act. Act, except ss. 7 and 8, not to extend to the metropolis.

X. This Act shall not extend to Scotland or Ireland. Extent of Act.

17 & 18 VICT. C. 87.

An Act to make further Provision for the Burial of the Dead in England beyond the Limits of the Metropolis. 17 & 18 Vict. c. 87.

[10th August, 1854.]

WHEREAS an Act was passed in the last session of Parliament, chapter one hundred and thirty-four, intituled "An Act to amend the Laws concerning the Burial of the Dead in England beyond the Limits of the Metropolis, and to amend the Act concerning the Burial of the Dead in the Metropolis": And whereas under the said Act provision is made for providing burial grounds for parishes by burial boards to be appointed by vestries: And whereas 16 & 17 Vict. c. 134.

17 & 18 Vict. c. 87.

in some cases of parishes wholly or partly within boroughs there is difficulty or inconvenience in providing requisite places of burial for the inhabitants under the powers of the said Act, and it is expedient that in such cases such places of burial should be provided by the councils of such boroughs: be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

The preamble was repealed by the Statute Law Revision Act, 1892.

Her Majesty may, by order in council, invest town councils with the power of providing burial grounds.

I. In case it appear to Her Majesty in council, upon the petition of the town council of any borough, stating that an order in council has been made for closing all or any of the burial grounds of one or more parishes being wholly or partly within such borough, that there is difficulty or inconvenience in providing, under the powers of the said Act of the last session of Parliament, requisite places of burial for the inhabitants of such parish or parishes, it shall be lawful for Her Majesty, with the advice of her privy council, to order that powers shall be vested in the council of such borough for providing such places of burial under the provisions of this Act: Provided always, that notice of such petition and of the time when it shall please Her Majesty to order that the same be taken into consideration by the privy council shall be published in the *London Gazette*, and in one of the newspapers usually circulating in such borough, one month at least before such petition is so considered.

This Act deals with the creation of burial grounds and burial boards by the town council of a borough. Borough

was defined by s. 29 of 20 & 21 Vict. c. 81, now repealed, and the present definition is contained in 45 & 46 Vict. c. 50, ss. 6 and 7. For somewhat similar provisions dealing with urban sanitary authorities other than the town council of a borough, see 20 & 21 Vict. c. 81, s. 4, *post*, p. 201. As to the exclusion from the operation of the Act of certain parishes in a borough, see ss. 7 and 9 of this Act, *infra*, p. 163. 17 & 18 Vict. c. 87.

Section 62, sub-s. 1 of the Local Government Act, 1894, *post*, p. 369, enacts that where there is in any urban district, or part of an urban district, an authority constituted under any of the Adoptive Acts (among which are included the Burial Acts), the council of that district may resolve that the powers, &c., of that authority shall be transferred to the council as from the date specified in the resolution, and upon that date the same shall be transferred and the authority shall cease to exist, and the council shall be the successors of that authority. By sub-s. 2 of the same section, none of the Adoptive Acts shall be adopted for any part of an urban district without the approval of the council of the district.

Upon the making of such order borough council to have all the powers vested in burial boards under 16 & 17 Vict. c. 134.

II. Upon the making of any such order of Her Majesty in council as aforesaid in relation to any borough, if the town council of the same shall decide upon providing one or more burial grounds, the said town council shall be a burial board for that purpose, and the provisions of the said Act of the last session, and the provisions of the Act of the fifteenth and sixteenth years of Her Majesty, chapter eighty-five, in the said Act of the last session mentioned or referred to and thereby extended and made applicable as therein mentioned, except the provisions relating to the constitution, incorporation, meetings, entries of proceedings, and accounts of burial boards, shall, subject to the provisions herein contained, extend and be applicable to such borough and the council thereof, and to any burial ground and any places for the reception of the bodies of the dead previously to interment which may be provided by such council under this Act in like

17 & 18 Vict. c. 87.

manner as the same are applicable to any parish and the burial board thereof, and to any burial ground and any such places as aforesaid provided by such burial board, save that no approval, sanction, or authorisation of the vestry of any parish shall be requisite.

The provisions relating to constitution, incorporation, &c., of burial boards are contained in ss. 10–18, and 24, of 15 & 16 Vict. c. 85, *ante*, the provisions of the Municipal Corporation Act, 1882 (45 & 46 Vict. c. 50), as to the constitution of borough councils are contained in ss. 8–16 of that Act, as to meetings in s. 22, as to accounts, ss. 25–28, and as to rates and the borough fund, ss. 139–149.

Expenses to be paid out of borough fund or borough rates.

III. Provided always, that all expenses of carrying this Act into execution in any borough shall, subject to the provisions hereinafter contained, be chargeable upon and paid out of the borough fund and borough rates of such borough, or partly out of such fund and partly out of such rates, in like manner as if the same were expenses incurred in carrying into effect the provisions of *an Act of the session holden in the fifth and sixth years of King William the Fourth, chapter seventy-six*; and any money to be borrowed under the authority of this Act by the council of such borough, and the interest thereon, shall be charged by such council on the monies out of which such expenses are by this Act directed to be paid, and the said provisions hereby extended and made applicable to the said council shall be construed accordingly; and any surplus of money raised for defraying such expenses as aforesaid, and of the income of any burial ground provided by the council of any borough, which if the same were provided by a burial board for any parish would be applicable in aid of the rate for the relief of the poor of such parish, shall be applicable in aid of the borough fund or borough rates of such

borough, or in case a separate rate has been levied in parts only of such borough, for the purposes of this Act, as hereinafter provided, then such surplus shall be applied rateably towards payment or satisfaction of so much of any borough rate as may be leviable in such parts of such borough: Provided always, that such surplus shall be ascertained upon the auditing of the accounts of the treasurer of such borough in the month of September in any year. 17 & 18 Vict. c. 87.

By s. 242 (1), Schedule 9, of the Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), the reference to 5 & 6 Will. IV. c. 76 in this section is to be read as a reference to the first-mentioned Act.

20 & 21 Vict. c. 81, s. 22, *post*, p. 219, gives power to councils of boroughs to make a separate rate for the expenses of the Burial Acts.

IV. If any burial board under the said Act of the last session of Parliament, or the council of any borough acting under this Act, can at any time borrow at a lower rate of interest than that secured by any mortgage previously made by them, and then outstanding and in force, they may, if they think fit, so borrow accordingly in order to pay off and discharge any security or securities bearing a higher rate of interest, and to secure the repayment of the money so borrowed, and the interest to be paid thereon, in like manner as other monies authorised to be borrowed by such burial board or council under the said Act of the last session or this Act. Money may be borrowed at lower rates of interest to pay off securities bearing a higher rate.

Sections 4 and 5 are practically superseded by 20 & 21 Vict. c. 81, ss. 19, 20, and 21, *post*, pp. 217–219. The power of borrowing money is given to burial boards by 15 & 16 Vict. c. 85, ss. 20 and 21.

V. If at the time appointed by any mortgage for payment of the principal money secured thereby any Power to borrow

17 & 18 Vict. c. 87. money to pay off former mortgages.

such burial board or council as aforesaid are unable to pay off the same, they may, if they think fit, borrow such sum of money as may be necessary for the purpose of paying off all or any part of such principal money, and secure the repayment of the money so borrowed, and the interest to be paid thereon, in like manner as other monies authorised to be borrowed by such burial board or council under the said Act of the last session or this Act.

See note to last section.

Council how to act under this Act, and conveyances and sales of lands how to be made.

VI. The council of any borough shall act in execution and exercise of their duties, powers, and authorities under this Act in like manner as in execution and exercise of their duties, powers, and authorities under the said Act of the fifth and sixth years of King William the Fourth; and every conveyance of lands to be purchased for the purposes of this Act shall be taken in the name of the body corporate of such borough, and such body corporate shall have power to hold such lands for the purposes of this Act; and no lands purchased under this Act by the council of any borough shall be sold, except with the like approbation and subject to the like restrictions as if sold under the said Act of the fifth and sixth years of King William the Fourth; and the signature of any member or members of such council shall not be necessary to any conveyance of any lands sold; and a receipt under the hand of the treasurer of such borough shall be a sufficient discharge to the purchaser of any such lands for the purchase-money in such receipt expressed to be received.

Section 107 and subsequent sections of the Municipal Corporations Act, 1882, contain provisions for the acquisition and alienation of land by municipal corporations in lieu of 5 & 6 Will. IV. c. 76, which is repealed by the former Act.

17 & 18 Vict. c. 87.

VII. The burial ground or burial grounds provided for any borough under this Act shall be deemed to be provided for such parish or parishes wholly or in part situate in such borough as the town council shall determine.

Burial ground to be deemed to be for the parishes in the borough.

By s. 53, sub-s. 2, of the Local Government Act, 1894, *post*, p. 362, if the area, after that Act comes into force, of an authority under the Burial Acts is partly comprised in an urban district the powers and duties of the authority are transferred to the parish councils partly comprised in the area and the district council of the urban district, and are to be, until other provision is made in pursuance of the Act, exercised by a joint committee appointed by those councils. Where any such rural parish has not a parish council, the parish meeting is substituted for the parish council. No provision is made under the Act for the proportionate numbers to be appointed by the two councils, nor is it expressly stated whether the joint committee is to be subject to the controlling power of the vestry, or a meeting in the nature of a vestry. The other provision to be made in pursuance of the Act is explained in sub-s. 4 of the same section, and in s. 36, which allow the county council to alter the boundaries of areas. Unless such alteration is made, the effect of the Act will be to make the joint committee of the part of the parishes without, and of the borough, the authority for the Burial Acts where at the time when the Local Government Act came into operation the burial authority for a parish partly within and partly without a borough was the borough council. The Act of 1894 apparently takes away the power of further creation of a single burial board for any areas partly within and partly without a borough.

Council may fix a higher rate of payment for interment, &c., in respect of outlying part of any parish partly situate

VIII. It shall be lawful for the council of any borough, if they see fit, in fixing and settling, revising and altering, the fees, payments, and sums mentioned in section thirty-four of the said Act of the fifteenth and sixteenth years of Her Majesty, from time to time to fix all or any of such fees, payments, and sums in respect of interments of the remains of persons, being inhabitants

17 & 18 Vict. c. 87. the borough.

of that part of any parish partly within and partly without the limits of such borough which is without such limits, and in respect of other rights to be exercised with reference to the interment of the remains of such persons, at a higher amount than the ordinary charge for the time being fixed by such council in respect of the like matters; provided always, that such higher amount shall be fixed with the approval of one of Her Majesty's principal secretaries of state.

Order in council may except parishes already having burial grounds; and in such case, if a rate be necessary, a separate rate to be made on the rest of the borough.

IX. Where, previously to the making of any order in council under this Act in relation to any borough, it appears to Her Majesty in council, upon the petition of the town council so made as aforesaid, or otherwise, that any parish wholly or in part within such borough is provided with a sufficient burial ground, it shall be lawful for Her Majesty in and by such order to direct that no part of such parish shall be assessed towards defraying the expenses of executing this Act in such borough, and in such case no burial ground provided for such borough under this Act shall be deemed to be provided for such parish; and any money required to be raised in such borough for defraying such expenses, or paying any money borrowed under this Act by the council of such borough, or any interest thereon, by means of a rate to be levied in such borough, shall be raised by a separate rate, to be levied within such parts of such borough as are not exempted under such order from being assessed as aforesaid: and (so far as may be consistent with this provision) the council of such borough shall have all such powers for making and levying such rate, and all provisions shall be applicable in respect thereof, as in the case of a borough rate made under the said Act of the fifth and sixth years of King William the Fourth.

The borough council may raise money to defray the expenses of the Burial Acts by a separate rate, to be called a burial rate (see 20 & 21 Vict. c. 81, s. 22, *post*, p. 219). As to powers of rating see Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), ss. 144–149. 17 & 18 Vict. c. 87.

As to parishes overlapping the borough area see note to s. 7, *ante*, p. 163.

Powers of vestry, with consent of bishop, of fixing and revising the fees payable to incumbent, &c., transferred to the borough council.

X. The powers of settling and fixing the fees or sums to be payable to the incumbent or minister, and of revising and varying the fees payable to the incumbent, clerk and sexton, and other persons and bodies, and of substituting for such fees fixed annual sums, by sections thirty-three and thirty-seven of the said Act of the fifteenth and sixteenth years of Her Majesty given to the vestry, and exercisable with the approval or consent of the bishop of the diocese, as therein mentioned, shall, with respect to fees and sums arising in or from any burial ground provided under this Act by the council of any borough, be transferred to such council, and be exercisable with the like approval or consent.

See *post*, the scale of fees adopted by some burial boards, also a suggested scale.

Council may appropriate land belonging to the borough.

XI. It shall be lawful for the council of any borough to appropriate for the purposes of this Act any land belonging to the body corporate of such borough, or vested in any feoffees, trustees, or others, for the general benefit of the borough, or for any specific charity; provided always, that where any land so appropriated shall be subject to any charitable use, such land shall be taken on such conditions only as a Court of Chancery, in the exercise of its jurisdiction over charitable trusts, shall appoint and direct.

For similar provisions see s. 29 of 15 & 16 Vict. c. 85, *ante*, p. 119.

17 & 18 Vict. c. 87.

Burial ground not to be within 100 yards of a dwelling-house.

XII. So much of the said Act of the fifteenth and sixteenth years of Her Majesty as enacts, that "no ground (not already used as or appropriated for a cemetery) shall be appropriated as a burial ground or as an addition to a burial ground under that Act nearer than two hundred yards to any dwelling-house, without the consent in writing of the owner, lessee, and occupier of such dwelling-house," shall not extend or be applicable to or in respect of any burial grounds which have been or may be provided under the said Act of the last session and this Act, or either of them, or to or in respect of any addition which has been or may be so provided to any burial ground; but no ground not already used as or appropriated for a cemetery shall be appropriated under the said Act of the last session and this Act, or either of them, as a burial ground, or as an addition to a burial ground, nearer than one hundred yards to any dwelling-house, without such consent as aforesaid.

This section was repealed by the Statute Law Revision Act, 1892.

18 & 19 VICT. C. 128.

18 & 19 Vict. c. 128.

An Act further to amend the Laws concerning the Burial of the Dead in England.

[14th August, 1855.]

15 & 16 Vict. c. 85.

16 & 17 Vict. c. 134.

WHEREAS an Act was passed in the session of Parliament holden in the fifteenth and sixteenth years of Her Majesty (chapter eighty-five), "to amend the Laws concerning the Burial of the Dead in the Metropolis;" and an Act was passed in the session of Parliament holden in the

sixteenth and seventeenth years of Her Majesty (chapter one hundred and thirty-four), "to amend the Laws concerning the Burial of the Dead in England beyond the Limits of the Metropolis, and to amend the Act concerning the Burial of the Dead in the Metropolis;" and an Act was passed in the last session of Parliament (chapter eighty-seven), "to make further Provisions for the Burial of the Dead in England beyond the Limits of the Metropolis;" and whereas it is expedient that further provision should be made for the burial of the dead, and that the said Acts should be amended: be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

18 & 19 Vict. c. 128.

17 & 18 Vict. c. 87.

The preamble was repealed by the Statute Law Revision Act, 1892.

I. That it shall be lawful for Her Majesty, by and with the advice of her privy council, from time to time to postpone the time appointed by any order in council for the discontinuance of burials, or otherwise to vary any order in council made under any of the said recited Acts or this Act, (whether the time thereby appointed for the discontinuance of burials thereunder or other operation of such order shall or shall not have arrived,) as to Her Majesty, with such advice as aforesaid, may seem fit; *and every order of Her Majesty in council made before the passing of this Act for varying any order previously made under the said Acts or any of them shall be deemed valid and effectual in law.*

Orders in council under the recited Acts may be varied by like orders.

II. If any person, after the time mentioned in any order in council under the said Acts or any of them, or this Act, for the discontinuance of burials, shall knowingly and wilfully bury any body or in anywise

Penalty on persons burying contrary to the provisions of

18 & 19 Vict. c. 128. orders in council.

act or assist in the burial of any body in any church, chapel, churchyard, burial ground, or place of burial or (as the case may be) within the limits in which burials have by such orders been ordered to be discontinued, in violation of the provisions of any such order, every person so offending shall, upon summary conviction before two justices of the peace, forfeit a sum not exceeding ten pounds.

It will be observed, that the misdemeanour imposed by 16 & 17 Vict. c. 134, s. 3, *supra*, p. 151, is not repealed by this section, although a specific penalty on summary process is given. It is however presumed, that though there may be a choice of punishments, both would not be enforced. With regard to this last-mentioned penalty, as the Act does not provide the means for its recovery, the proceedings will of course be regulated by the provisions of the Summary Jurisdiction Acts, 1848 and 1879 (11 & 12 Vict. c. 43 and 42 & 43 Vict. c. 49), which consolidate the practice with respect to summary convictions before justices. According to these statutes in all cases where information shall be laid, a summons may be issued, and no objection shall be taken for want of form. If the summons be disobeyed, a warrant may issue. Aiders or abettors are liable to the same penalties. Attendance of witnesses may be compelled, who, on refusal to be examined, may be imprisoned for a period not exceeding seven days. Costs may be awarded to either complainant or defendant, recoverable by distress, and in default, imprisonment may follow, not exceeding one month. On conviction, where, as here, no provision is made for the recovery of penalties, they may be levied by distress, and, in default of sufficient distress, the defendant may be imprisoned. Information may be laid before one justice, who may thereupon summon the offender to appear before two justices, compel attendance of witnesses, and do all other necessary acts preliminary to the hearing, before two justices present and acting together, and after the hearing, one justice may issue all warrants of distress or commitment thereon, though he be not one of the justices who determined the case. Sums recovered are to be paid to the treasurer of the county, &c., for which justices shall have

acted. A metropolitan police magistrate or an alderman of London may act alone. 18 & 19 Vict. c. 128.

On the subject of penalties, it may be well to call attention to the 58 Geo. III. c. 45, s. 80, which imposes a penalty of 50*l.* on any person ordering or causing the making of any grave (vaults of a certain description excepted) within twenty feet of the external walls of any church erected under the provisions of that Act. This penalty is recoverable before any two justices, by distress and sale, one-half to be paid to the informer, and the other to the use of the poor. The like penalty, with costs of suit, is imposed by 38 & 39 Vict. c. 55, Schedule 5, for burial in any vault, &c., within the walls of or underneath any church or place of worship built in any urban district after 31st August, 1848.

Power to churchwardens to call vestry meetings for providing burial grounds.

III. The churchwardens or other persons to whom it belongs to convene meetings of the vestry of any parish in which no burial board has been appointed may, at any time, at their discretion, without requisition of ratepayers for that purpose, convene a meeting of such vestry for the purpose of determining whether a burial ground shall be provided for the parish; and

Where order in council has been made, or notice given to apply to the privy council for closing burial grounds, churchwardens shall call a meeting of vestry.

where any order in council has been made before the passing of this Act for discontinuing burials (wholly or subject to any exception or qualification) in any burial ground of any parish for which no burial board has been appointed, or notice has been given of the intention of the secretary of state to make a representation to Her Majesty in council that burials should be discontinued (wholly or subject to any exception or qualification) in any burial ground of any parish, the churchwardens or other persons to whom it belongs to convene meetings of vestry shall, with all convenient speed after the passing of this Act, convene a meeting of the vestry for the purpose aforesaid; and where at any time hereafter notice is given of the intention of the secretary of state to make a like representation in

18 & 19 Vict. c. 128.

relation to a burial ground of any parish, such churchwardens or other persons as aforesaid shall forthwith convene a meeting of the vestry for the purpose aforesaid; and all the provisions of the said Acts as amended by this Act relating to and consequent upon vestry meetings convened upon such requisition as provided by the first-recited Act shall be applicable to vestry meetings convened under this enactment.

See Form 2, *post*.

Section 10 of 15 & 16 Vict. c. 85, *ante*, p. 101, made general for parishes outside the metropolis by s. 7 of 16 & 17 Vict. c. 134, *ante*, p. 153, made a requisition in writing by ten ratepayers a condition precedent to action by the churchwardens.

The notice of intention to make a representation, and the order in council discontinuing burials, are provided for by 15 & 16 Vict. s. 2, *ante*, p. 93, and 16 & 17 Vict. c. 134, s. 1, *ante*, p. 149.

Vacancies in burial board to be filled up by vestry within a month.

IV. Every vacancy in any burial board shall be filled up by the vestry appointing the same within one month after such vacancy shall have happened, and immediately on the occurrence thereof the same shall be notified by the burial board to the churchwardens or other persons to whom it belongs to convene meetings of the vestry; and in case any such vestry shall neglect to fill up any such vacancy, the vacancy may be filled up by the burial board at any meeting thereof; and every person to be appointed to supply any such vacancy shall be a ratepayer of the parish for which the burial board is appointed; and every such board may act for any purpose, notwithstanding any vacancies therein.

This section is substituted for s. 12 of 15 & 16 Vict. *ante*, p. 107, which was repealed by the Statute Law Revision Act, 1875.

If the vestry do not fill up the vacancy in a month, the burial board may do so (*Reg.* v. *Overseers of South Weald*,

[1864] 10 L. T. N. S. 498; 33 L. J. Q. B. 323, M. C. 193; 5 B. & S. 391. 18 & 19 Vict. c. 128.

A conviction for felony (33 & 34 Vict. c. 23, s. 2) or an adjudication of bankruptcy (46 & 47 Vict. c. 52, s. 34) will vacate the office of a member of a burial board.

Under the Local Government Act, 1894, if the parish council be the authority for the execution of the Burial Acts, the provisions of s. 47, sub-s. 4 of the Local Government Act will take the place of this section. In parishes where there is no parish council, and the parish meeting elect the burial board, this section will apparently still apply, with the substitution of the parish meeting for the vestry. If under s. 19 (10) of the Local Government Act the parish meeting itself be made the authority for executing the Acts, and the need for a burial board be removed, then, of course, no provision for filling vacancies is necessary.

Monthly meetings of boards repealed.

V. *So much of section thirteen of the said Act of the fifteenth and sixteenth years of Her Majesty as requires that the burial board shall meet once at least in every month shall be repealed.*

Repealed by the Statute Law Revision Act, 1875.

Sanction of vestry not required for expenditure and other acts of burial board in certain cases.

VI. If the vestry of any parish shall refuse or neglect to authorise the expenditure of such sums as the burial board of such parish shall have declared to be necessary for providing and laying out a burial ground, and building the necessary chapel or chapels therein, it shall be lawful for such burial board to represent such refusal or neglect to one of Her Majesty's principal secretaries of state; and in case it shall appear to the secretary of state, after inquiry into the circumstances of the case, that the burial board are unable to provide such burial ground, or to proceed effectually in the execution of their duties, by reason of such refusal or neglect, it shall be lawful for such secretary of state, by warrant under his hand, to authorise such burial board, without further authority, sanction, or

18 & 19 Vict. c. 128.

approval of or by such vestry, to expend such sums of money for providing and laying out a burial ground, and building the necessary chapel or chapels thereon, and to borrow and charge such money for all or any of such purposes, and to enter into and make such contracts and purchases, and do such other acts as under the sections nineteen, twenty, twenty-six, and forty-two of the said Act of the fifteenth and sixteenth years of Her Majesty might have been expended, borrowed, and charged, entered into, made, and done with the authority, approval, and sanction of such vestry, subject, nevertheless, to such limitation of amount or other limitation or restriction as such secretary of state may by his warrant prescribe; and all acts done in pursuance of such warrant shall be as valid and effectual as if the authority, approval, and sanction of such vestry had in every case been obtained.

The sections of 15 & 16 Vict. c. 85 here referred to are made of general application by 16 & 17 Vict. c. 134, s. 7, *ante*, p. 153.

The consent of the vestry is made necessary for authorising the expenses of providing and laying out a burial ground by s. 19 (*ante*, p. 110) of 15 & 16 Vict. c. 85, for borrowing money by s. 20 (*ante*, p. 111), for purchasing land by s. 26 (*ante*, p. 117), and for providing mortuaries by s. 42 (*ante*, p. 132).

By s. 7, sub-s. 3 of the Local Government Act, 1894, where under the Burial Acts the consent or approval of or other act on the part of the vestry of a rural parish is required in relation to any expense or rate, the parish meeting shall be substituted for the vestry, and for this purpose the expression vestry shall include any meeting of ratepayers or voters. The combined effect of that section and the Burial Acts would appear to be that where a parish council is the authority for carrying the Burial Acts into execution, the parish council can appeal from the refusal of consent by the parish meeting to the secretary of state. It is apprehended that the limitation of borrowing powers contained in the Burial Acts will apply to the parish

council, and that money cannot be borrowed except for the purposes therein mentioned. Where a burial board is appointed by a parish meeting having no council, the burial board may appeal. In both cases the methods of borrowing will be those prescribed by s. 12 of the Local Government Act, 1894. The rate which can be levied by a parish meeting having no council is restricted by s. 19, sub-s. 3 of that Act, which enacts that a rate levied for defraying the expenses of the parish meeting, when added to expenses under any of the adoptive Acts which include the Burial Acts, shall not exceed sixpence in the pound in any local financial year. 18 & 19 Vict. c. 128.

VII. All such fees, payments, and sums as may be fixed, settled, and received by any burial board under section thirty-four of the said Act of the fifteenth and sixteenth years of Her Majesty, shall be so fixed and settled subject to the approval of one of Her Majesty's principal secretaries of state; and no such fees, payments, or sums shall be altered or varied without such approval. Fees, &c., to be subject to the approval of secretary of state.

See *post*, the scale of fees adopted by some boards, also suggested fees.

VIII. It shall be lawful for one of Her Majesty's principal secretaries of state from time to time to appoint and authorise any person to inspect any burial ground or cemetery, parochial or non-parochial, or place for the reception of bodies, to ascertain the state and condition thereof, and where regulations in relation thereto have been made or may be made by the secretary of state under the said Acts or any of them, to ascertain whether such regulations have been observed and complied with; and if any person having the care of any such burial ground or cemetery or other place shall obstruct any person so authorised to inspect the same, or if any person having the care of any burial ground or place for the reception of bodies subject to Secretary of state may direct inspection of burial ground.

Penalty for obstructing inspector or violating regulations.

18 & 19 Vict. c. 128.

such regulations as aforesaid shall violate or neglect or fail to observe and comply with any such regulation, or any regulation imposed by this Act, every person so offending shall, upon summary conviction thereof before two justices, forfeit and pay a sum not exceeding ten pounds.

Part of s. 24 (*sic*) of 15 & 16 Vict. c. 85, repealed.

IX. *So much of the said Act of the fifteenth and sixteenth years of Her Majesty as enacts that "no ground (not already used as or appropriated for a cemetery) shall be appropriated as a burial ground or as an addition to a burial ground under that Act nearer than two hundred yards to any dwelling-house, without the consent in writing of the owner, lessee, and occupier of such dwelling-house," shall be repealed; but* no ground not already used as or appropriated for a cemetery shall be used for burials under the said Act or this Act, or either of them, within the distance of one hundred yards from any dwelling-house, without such consent as aforesaid.

Burial ground not to be within one hundred yards of a dwelling-house.

The part in italics is repealed by the Statute Law Revision Act, 1892.

Originally the distance of two hundred yards was required by 15 & 16 Vict. c. 85, s. 25 (and not by s. 24); see also 17 & 18 Vict. c. 87, s. 12, p. 166. This consent is necessary for private grounds as well as cemeteries established under the Burial Acts—so held by Malins, V.-C., granting an injunction to restrain burials in a new private ground (*Greenwood* v. *Wadsworth*, [1873] 29 L. T. N. S. 88; L. R. 16 Eq. 288; 43 L. J. Ch. 78). But the prohibition within one hundred yards of any dwelling without consent applies to actual burial only, and not to the boundary of the cemetery (*Cowley* v. *Byas*, [1877] 5 Ch. D. 944; 37 L. T. 238; 26 W. R. 1 C. A.).

The word "dwelling-house" does not for the purposes of this Act include curtilage, and therefore the specified distance must be measured from the walls of the dwelling-house (*Wright* v. *Wallasey Local Board*, [1887] 18 Q. B. D. 783; 56 L. J. Q. B. 259; 52 J. P. 4).

18 & 19 Vict. c. 128.

If ratepayers resolve, land for new burial ground may be conveyed and settled as old burial ground.

X. If the ratepayers assembled at any vestry duly convened under the provisions of this Act shall, in pursuance of public notice duly given in that behalf, resolve unanimously that any new burial ground to be provided for their parish, under the provisions of this Act, shall be held and used in like manner and subject to the same laws and regulations in all respects as the existing burial ground or churchyard of the said parish, the land for such new burial ground may be conveyed and settled in accordance with such resolution, anything in this or the said recited Acts notwithstanding, and in such case it shall not be necessary to set apart to remain unconsecrated any portion of the land so conveyed and settled: Provided always, that if at any time within ten years thereafter the vestry, duly convened under the provisions of this Act in pursuance of public notice duly given in that behalf, should determine that an unconsecrated burial ground should be also provided for such parish, all the powers and provisions of the said recited Acts and this Act may be put in force and shall be applicable for providing such unconsecrated burial ground separately, in like manner as they might have been put in force and been applicable for providing an ordinary burial ground for such parish.

See Form 13, *infra*. The intention of this section appears to be to enable small parishes, in which there happen to be no Nonconformists who make a point of unconsecrated ground being provided, simply to have a second churchyard, or an addition made to the existing churchyard under the powers of the Act, without incurring further expenses; and it is apprehended that after such new ground has been provided and vested in them in trust for the incumbent, the duties of the burial board will be in abeyance, except for the purpose of authorising any rate which may from time to time be required in paying off incumbrances.

18 & 19 Vict. c. 128.

See notes to s. 14, and see also 20 & 21 Vict. c. 81, s. 3, which latter gives power to provide separate and distinct grounds, to be used respectively as consecrated and unconsecrated grounds.

If under the Local Government Act, 1894, the parish council is the authority for executing the Burial Acts, then by s. 6, sub-s. 1 of that Act it will possess the powers of the vestry under this section. If the parish possess no council, then the parish meeting under s. 19 will be substituted for the vestry.

How burial grounds are to be provided for united parishes.

XI. Where a parish or place has been united with any other parish or place, parishes or places, for all or any ecclesiastical purposes, or where two or more parishes or places have heretofore had a church or a burial ground for their joint use, or where the inhabitants of several parishes or places have been accustomed to meet in one vestry for purposes common to such several parishes or places, it shall be lawful for the vestry or any meeting in the nature of a vestry of such several parishes or places in any of the cases aforesaid, and whether any one or more of such parishes or places do or do not separately maintain its own poor, to appoint a burial board, and from time to time to supply vacancies therein, and to exercise the same powers of authorisation, approval, and sanction in relation to such burial board, and such other powers as under the said Acts and this Act are vested in the vestry of a parish or place separately maintaining its own poor; and the burial board so appointed shall have all the powers for providing a burial ground for the common use of such several parishes or places, and for facilitating interments, and otherwise, as if such several parishes or places had been a parish separately maintaining its own poor; and the expenses of the burial board appointed under this provision shall be borne by the several parishes or places for which such board is appointed,

and shall be apportioned among them by such burial board in proportion to the value of the property in such several parishes or places as rated to the relief of the poor; and the sums required by the burial board in respect of the portion of such expenses to be borne by any such parish or place shall be paid out of the rates for the relief of the poor in such parish or place, in like manner as if such burial board had been appointed for such parish or place alone. 18 & 19 Vict. c. 128.

Amended by 20 & 21 Vict. c. 81, s. 9.

A burial board for a parish and hamlet united, and meeting in one vestry for ecclesiastical purposes, and having one church and burial ground, but separately maintaining their own poor, and having separate vestries for parochial purposes, was held well constituted under this section (*Reg.* v. *Overseers of Coleshill*, [1862] 31 L. J. Q. B. 219; on appeal, 34 L. J. Q. B. 96, *sub nom. Reg.* v. *Ives*, [1862] 7 L. T. N. S. 244.

The approval of a secretary of state is by 20 & 21 Vict. c. 81, s. 9, *infra*, p. 209, made necessary for establishing a burial board under this section. The way in which the consent is to be obtained is prescribed by 34 & 35 Vict. c. 33, s. 1, *infra*, p. 236.

The provisions of the Burial Acts as to the districts for which burial boards may be established are shortly as follows:

By 15 & 16 Vict. c. 85, a burial board may be created for any parish which is defined as "every place having separate overseers of the poor and separately maintaining its own poor." Under that Act it was held that a burial board could be provided for a whole *common law* parish whether it separately maintained its own poor or not (*Reg.* v. *Sudbury Burial Board*, [1858] E. B. & E. 264; 31 L. T. 161; 27 L. J. Q. B. 232), and whether the common law parish had or had not been divided into separate ecclesiastical districts (*Reg.* v. *Overseers of Walcot*, [1862] 2 B. & S. 555; 6 L. T. N. S. 320; 31 L. J. M. C. 217). By s. 23 of the same Act two parishes may unite in providing a burial ground. This section allows burial boards to be provided for united parishes or places, and s. 12 for townships, &c., not separately maintaining their own poor

18 & 19 Vict. c. 128.

but previously possessing a burial ground. See the notes to that section, *infra*, for the decisions as to its effect. 20 & 21 Vict. c. 81, s. 5, *infra*, p. 203, legalises the creation of a burial board for districts not maintaining their own poor and not possessing a separate burial ground.

By s. 53, sub-s. 2 of the Local Government Act, 1894, *post*, p. 362, if the area under any authority under the Burial Acts was not at the time when the Act came into operation comprised within one rural parish, the powers and duties of the authority were transferred to the parish councils of the rural parishes wholly or partly comprised in that area, or if the area was partly comprised in an urban district, to those parish councils and the district council of the urban district, and are, until other provision is made in pursuance of the Act, to be exercised by a joint committee appointed by those councils. Where any such rural parish has not a parish council, the parish meeting is substituted for the parish council. The effect of that enactment would appear to be to split up burial boards appointed for a group of parishes under this section, if these parishes are not within a single rural parish under the Act, and to transfer the powers of the burial boards to joint committees. The Local Government Act makes no provision allowing the adoption of the Burial Acts for an area such as is mentioned in this section, and the latter is apparently no longer in force in rural parishes. Possibly a joint burial ground might be provided under s. 23 of 15 & 16 Vict. c. 85, *ante*, p. 114, and s. 57 of the Local Government Act, 1894, *post*, p. 362.

Burial boards may be appointed for township, &c. (not separately maintaining their own poor), which have had separate burial grounds.

XII. The vestry or meeting in the nature of a vestry of any parish, township, or other district not separately maintaining its own poor, which has heretofore had a separate burial ground, may appoint a burial board, and from time to time supply vacancies therein, and may exercise the same powers of authorisation, approval, and sanction in relation to such burial board, and such other powers as under the said Acts and this Act are vested in the vestry of a parish separately maintaining its own poor; and the burial board so appointed

shall have all the powers for providing a burial ground and otherwise as if such parish, township, or other district had been a parish separately maintaining its own poor. 18 & 19 Vict. c. 128.

The existence of a legally constituted burial board for the whole of a parish was held not to prevent the vestry of an ecclesiastical district formed out of such parish under 1 & 2 Will. IV. c. 38, and which did not separately maintain its own poor, from legally appointing a burial board for such district under this section (*R.* v. *Overseers of Tonbridge*, [1884] 13 Q. B. D. 339).

See note to s. 10 of 15 & 16 Vict. c. 85, *supra*, p. 102, and to the last section.

Where a district of a parish is entitled under this section, though not separately supporting its own poor, to appoint a separate burial board, the rest of a parish, minus the district, may appoint a burial board (*Viner* v. *Churchwardens, &c. of Tonbridge*, [1859] 2 E. & E. 9; 28 L. J. M. C. 251; 7 W. R. 553).

By s. 53, sub-s. 1 of the Local Government Act, 1894, *post*, p. 362, where on the day appointed for that Act to come into operation the Burial Acts are in force in part only of a rural parish, the existing authority under those Acts or the parish meeting for that part may transfer the powers, duties, and liabilities of the authority to the parish council, subject to any conditions as to the execution thereof by means of a committee as to the authority or parish meeting may seem fit, and any such conditions may be altered by any such parish meeting. If, therefore, on that day there is a burial board in existence created for part of a rural parish under this section, its powers may or may not be transferred to the parish council, and until such transference it is apprehended that it will still be subject to the control of the vestry or meeting in the nature of a vestry, with the possible exception of powers to which a special majority is required. It seems doubtful whether these latter powers are or are not transferred to the parish meeting by s. 7, sub-s. 2 of the Local Government Act, *post*, p. 326. If the area for which the burial board exists is partly within and partly without a rural parish under the Local Government Act, then s. 7, sub-s. 2 of the Local Government Act applies. For

18 & 19 Vict. c. 128.

the effect of this *vide* the notes to the last section. In future, by s. 7, sub-s. 4 of the Local Government Act, 1894, where there is power to adopt any of the adoptive Acts for part only of a rural parish, the Act may be adopted by a parish meeting held for that part, but no power is given to adopt the Burial Acts for any area partly within and partly without a rural parish. Hence the combined effect of this section and the Local Government Act, 1894, is to give the powers formerly possessed by the vestry under this section to the parish meeting for a part of a parish already in possession of a burial ground, provided the part is wholly within one parish.

Provision for expenses of burial boards of places not separately maintaining their own poor.

XIII. Where any district (whether a parish or township or other subdivision) not separately maintaining its own poor, but forming part of a parish maintaining its own poor, or of an incorporation or other union maintaining the poor of the places comprised therein, by means of a common rate, shall have a burial board, or shall form part of a place or union of places not coextensive with the area rated for the relief of the poor, and having one burial board, it shall be lawful for such respective burial board to issue their certificate to the overseers of such parish, or the overseers or other persons authorised to make and collect or cause to be collected such common rate (as the case may be), for payment of the sums required for the expenses of such burial board, or, where such district not separately maintaining its own poor forms part only of the area of the burial board, of the sums required in respect of the portion of such expenses to be borne by such district, in like manner as if such district had been a parish separately maintaining its own poor, and such overseers or persons authorised as aforesaid had been the overseers thereof; and such overseers or persons shall pay such sums as shall be required by such certificate, according to the directions of such burial board, and shall levy such sums

as may be required for such payments to the burial board by an addition to the parish rate or common rate, so far as the same affects the district in respect of which such payments are required, or by separate rates to be made from time to time on such district; and for levying such additions or separate rates as aforesaid such overseers or other persons shall have the powers, remedies, and privileges, and proceed in the same manner, as in the case of the rates for the relief of the poor; provided that any such rates may (notwithstanding any restriction in relation to the parish rate or common rate) be made and levied at such times as may be necessary to provide for the payments aforesaid. 18 & 19 Vict. c. 128.

See *post*, Form 6.

By s. 67 of the Local Government Act, 1894, *post*, p. 370, where any powers and duties are transferred by that Act from one authority to another authority, the property of the former vests in the latter, subject to debts and liabilities affecting it, and it is held on the same terms as formerly. The debts and liabilities of the first authority become debts and liabilities of the latter authority, and are to be defrayed out of the like property and funds out of which they would have been defrayed if that Act had not been passed. Therefore, the power of certifying for a proportionate amount of the rate to be paid for the expenses of carrying out the Burial Acts, will be transferred to the authorities constituted by the Local Government Act for their execution.

XIV. And whereas doubts have arisen whether in all cases in which any burial board shall build in any burial ground provided by such board a chapel for the burial service according to the rites of the *united* Church of England *and Ireland*, such burial board is not also bound by law to build a chapel or chapels upon the unconsecrated part of such burial ground for the performance of burial service for persons not being members of the said Church: be it enacted, that in any

No obligation to build a chapel for persons not members of the Church of England when secretary of state, upon representation of three-fourths of vestry,

18 & 19 Vict. c. 128. declares it unnecessary.

such case as aforesaid, where it shall appear to one of Her Majesty's principal secretaries of state, upon the representation of a majority of the vestry of any parish, consisting of not less than three-fourths of the members of the same, that the building of a chapel upon the unconsecrated part of any such burial ground for the use of persons not being members of the said Church is undesirable and unnecessary, it shall be lawful for the said secretary of state, if he shall think fit, to signify his opinion to that effect to the burial board of the parish, and the said burial board shall thereupon be relieved from all obligation to build the same: Provided always, that such secretary of state shall not signify his opinion as aforesaid unless it be shown to his satisfaction that notice of the intention to propose to such vestry to make such representation was given in manner required by law for notices of vestry meetings, and of the special purposes thereof.

From this and the previous provisions on the point (15 & 16 Vict. c. 85, s. 30, *ante*, p. 120, and 16 & 17 Vict. c. 134, s. 7, *ante*, p. 153), it will be seen that in every case in which a new burial ground is provided under these Acts (except under s. 10 of this Act, *ante*, p. 175), a chapel *may* be built on the consecrated portion and another on the unconsecrated portion of the ground; but where an *episcopal* chapel is erected on the consecrated ground, it is imperative that another *shall* be also built on the unconsecrated ground, unless it be deemed unnecessary by three-fourths of the vestry, and by the secretary of state. There may be instances where neither is required by reason of the proximity of both Church and Nonconformist chapels to the new ground. There are cases also where, the church being close at hand, no episcopal chapel is needed, but it is desirable to build for the accommodation of Nonconformists. In the third case, the church may be distant and the Nonconformist chapels near, or there may be no Nonconformists in a small parish; there-

fore under the last-mentioned Act means are provided to enable the burial board to erect an episcopal chapel only. 18 & 19 Vict. c. 128.

By s. 6, sub-s. 1 (*a*) of the Local Government Act, 1894, the powers of the vestry under this section are transferred to the parish council where that body is the authority for executing the Burial Acts. Where there is no parish council, and the parish meeting appoints a burial board, the parish meeting will have those powers. Where a burial board has previously existed for part of a rural parish, and its powers, &c., are not transferred to the parish council under s. 53, sub-s. 1, of the Local Government Act (*post*, p. 362), apparently the vestry or meeting in the nature of a vestry for that part will still retain the powers given by this section, though this point is somewhat doubtful, and depends on the construction of s. 7, sub-s. 2, of the Local Government Act (*post*, p. 326).

Assessment to local rates not to be increased after purchases for the purposes of this or any former Act.

XV. No land already or to be hereafter purchased or acquired, under the provisions of any of the Acts hereinbefore recited, for the purpose of a burial ground (with or without any building erected or to be erected thereon), shall while used for such purposes be assessed to any county, parochial, or other local rates at a higher value or more improved rent than the value or rent at which the same was assessed at the time of such purchase or acquisition.

Although the legal fee is conveyed to the purchaser of a grave, a cemetery company is rateable as occupier according to the improving value arising from such sales (*R.* v. *Abney Park Co.*, [1873] L. R. 8 Q. B. 515; 42 L. J. M. C. 124; 29 L. T. N. S. 174).

By s. 151 of the Public Health Act, 1875 (38 & 39 Vict. c. 55), the incumbent or minister of any church, chapel, or place appropriated to public religious worship which is now by law exempt from rates for the relief of the poor, shall not be liable to any expenses for street paving as the owner or occupier of such church, chapel, or place, or of any churchyard or burial ground attached thereto, nor shall any such expenses be deemed to be a charge on such church, chapel,

18 & 19 Vict. c. 128.

or other place, or on such churchyard or burial ground, or to subject the same to distress, execution, or other legal process; and the urban authorities may, if they think fit, undertake any works from the expenses of which the incumbent or minister is thereby exempted.

Separate burial boards whose burial grounds adjoin may contract with each other for specific purposes.

XVI. *That* in any case where the burial boards appointed under the said recited Acts of the fifteenth and sixteenth and the sixteenth and seventeenth years of Her Majesty, or either of them, for any two parishes, shall provide separate burial grounds for such parishes respectively, and such burial grounds shall adjoin each other, it shall be lawful for the said burial boards to concur in building, either on one of the said burial grounds or partly on one of such grounds and partly on the other, such chapels as are authorised to be built by the said Acts, and *that* such chapels when erected shall be used in common by both of such parishes, and be deemed and taken to be the chapels of and belonging to each of such burial grounds respectively, in such manner, consistent with the provisions of the said Acts or either of them, as the said burial boards shall mutually agree upon; and *that* the said burial boards may agree as to the proportions in which the expenses of erecting such chapel accommodation shall be borne by each of the said boards respectively; and the proportion for each of such parishes of such expenses shall be chargeable upon and paid in the same manner as the costs of providing burial grounds under the said Acts; and where any burial board shall provide a burial ground, and cause chapels to be built thereon, pursuant to the said recited Acts, it shall be lawful for such burial board, with the sanction of one of Her Majesty's principal secretaries of state, to contract with any other burial board whose burial ground shall adjoin the

one on which such chapels shall so have been built, for the use of such chapels, in such manner and on such terms as such respective burial boards shall mutually agree, and *that* during the existence of any such agreement such chapels shall be deemed and taken to be the chapels of and belonging to each of such burial grounds respectively. 18 & 19 Vict. c. 128.

The words in italics are repealed by the Statute Law Revision Act, 1892.

Burial board may let land not required for burials.

XVII. It shall be lawful for any burial board, with the sanction of one of Her Majesty's principal secretaries of state, and subject to regulations approved of by him, to let any land purchased by and vested in them under this Act or any of the Acts hereinbefore recited, and which has not been consecrated, and in which no body has been at any time interred, and which is not for the time being required for the purposes of a burial ground, in such manner and on such terms as such board may see fit, but so nevertheless that power shall be reserved to such board to resume any such land which may be required for the purposes aforesaid, upon giving six months notice.

Burial board to keep in order closed burial grounds, &c.

XVIII. In every case in which any order in council has been or shall hereafter be issued for the discontinuance of burials in any churchyard or burial ground, the burial board or churchwardens, as the case may be, shall maintain such churchyard or burial ground of any parish in decent order, and also do the necessary repair of the walls and other fences thereof, and the costs and expenses shall be repaid by the overseers, upon the certificate of the burial board or churchwardens, as the case may be, out of the rate made for the relief of the poor of the parish or place in which such churchyard or burial ground is situate, unless there shall be some

18 & 19 Vict. c. 128.

other fund legally chargeable with such costs and expenses.

The vestry are bound to pay sums for which the churchwarden under their authority has rendered himself liable, though not actually paid. A letter written by him stating the sum required is sufficient certificate (*R.* v. *St. Mary, Islington*, [1890] 25 Q. B. D. 523).

The churchyard or burial ground must be one belonging to a parish, either under the care of churchwardens according to custom, or having been provided by a burial board. In the case of *Reg.* v. *Burial Board of St. John Westgate and Elswick*, [1862] 31 L. J. Q. B. 205, 6 L. T. N. S. 504, it was held that the board were not chargeable under this section with the repairs of any closed burial ground the property of private persons *in* the parish, but only of parochial burial grounds which have been closed. In *Reg.* v. *Burial Board of Bishopwearmouth*, [1879] 5 Q. B. D. 67, however, it was held on appeal that for the repair and maintenance of a closed churchyard under the care of the churchwardens of the parish, the overseers were responsible, and a mandamus which had been granted against the burial board was therefore discharged. It was also held that the expense of keeping the churchyard in order was payable out of the poor rate of the common law parish in which it was situate, and not out of the rates of all the parishes using it as a burial ground. But where local boards of health have been constituted burial boards, they may maintain any burial ground the use of which as such has been discontinued within their district, and repair the fences thereof; and may make bye-laws for the regulation of all burial grounds within their limits (24 & 25 Vict c. 61, s. 21). This statute was repealed by 38 & 39 Vict. c. 55, s. 243; but s. 21 was preserved by Schedule 5 of the last-mentioned Act. A school has been allowed to be erected on such closed ground under a faculty (*In re Bettison*, [1874] L. R. 4 Ecc. 294). Footpaths across such ground appropriated as a public garden, with gates giving access thereto, will also be authorised (*In re St. George's-in-the-East*, [1876] 1 P. D. 311). Under the 30 & 31 Vict. c. 38, the Bunhill Fields Burial Ground, Middlesex, is to be laid out and preserved as an open space by the Corporation of London.

As to buildings on closed grounds now see Disused Burials Ground Act, 1884 (47 & 48 Vict. c. 72), *post*, p. 417, as amended by the Open Spaces Act, 1887 (50 & 51 Vict. c. 32, s. 4), *post*, p. 423. 18 & 19 Vict. c. 128.

See Introduction, *ante*, p. 2, for the common law as to churchyards.

Any nuisance in the churchyard is properly of ecclesiastical cognizance (*Quilter* v. *Newton*, Carth. 152). By the common law the parishioners are bound to repair the fence of the churchyard at their own charge (Lind. 253; 2 Inst. 489). By prescription the vicar may be liable to repair the fence, and an indictment will lie for a misdemeanour if any damage be occasioned by neglect (*R.* v. *Reynell*, [1805] 6 East 315). If owners of adjoining lands have been used to repair, such is a good custom, and proceedings may be had at common law for neglect. By Canon 85, the churchwardens are to see to the repair, &c. of the churchyard in manner as accustomed, at the charge of the proper parties. The incumbent may bring his action for any trespass in the churchyard (Bro. Abr. Trespass, 210); so also may his lessee (2 Rol. Abr. 337). Any person guilty of violent or indecent behaviour in any churchyard, or who shall disturb any clergyman celebrating divine service therein, is liable to a penalty of 5*l.* or two months' imprisonment (23 & 24 Vict. c. 32, s. 2), and for damage to any monument or fence to imprisonment not exceeding six months with or without hard labour (24 & 25 Vict. c. 97, s. 39). Trespass lies for the erector of a tombstone against a person who wrongfully removes it; although the freehold of the churchyard is in the parson, even he has no right to remove the tombstones, the property of which remains in the persons who erected them (*Spooner* v. *Brewster*, [1825] 3 Bing. 136; *Bryan* v. *Whistler*, [1828] 8 B. & C. 288). Monuments or buildings of height cannot legally be erected without a faculty from the ordinary (*Seager* v. *Bowle*, [1823] 1 Add. 541; *Bardin* v. *Calcott*, [1789] 1 Hagg. Consis. 14). A bequest to churchwardens for keeping certain tombs in repair is void (*Rickard* v. *Robson*, [1862] 8 Jur. N. S. 665; *In re Vaughan*, [1886] 33 Ch. D. 187; 55 L. T. N. S. 547). The ecclesiastical court cannot allow any portion of consecrated ground to be converted to secular uses, nor grant a faculty to confirm such

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appropriation (*Harper* v. *Forbes*, [1859] 5 Jur. N. S. 275; *Rector of Walbrook* v. *Parishioners*, [1852] 2 Rob. Ecc. 515; *Walter* v. *Mountague*, [1836] 1 Curt. 253); and the court will compel the restoration of any portion of such ground which has been improperly removed (*Jarrett* v. *Steel*, [1820] 3 Phill. 167; *Knapp* v. *Parishioners of Willesden*, [1851] 2 Rob. Ecc. 364; *Campbell* v. *Parishioners of Paddington*, [1852] Id. 558; *Adlam* v. *Colthurst*, [1867] L. R. 2 Ad. & Eccl. 30; but the court will grant a faculty for the erection of schools in a churchyard in certain cases (*The Rector of St. George* v. *Stewart*, [1740] 2 Str. 1126), and especially if the ground be closed under the Burial Acts (*Russell* v. *Parish of St. Botolph*, [1859] 5 Jur. N. S. 300). Where a churchyard which had been closed by order in council had afterwards been taken by a railway company under the Lands Clauses Act, and a sum paid into court, it was held that the rector was entitled to have such sum invested and to receive the dividends (*Ex parte Rector of Liverpool*, [1870] 23 L. T. N. S. 354; see *ante*, p. 94). Consecrated burial ground cannot be used for other purposes, nor can the owners remove the bodies interred therein without an Act of Parliament (*R.* v. *Twiss*, [1869] L. R. 4 Q. B. 407; 10 B. & S. 298; 38 L. J. Q. B. 228; 20 L. T. N. S. 522; 17 W. R. 765). As to rights of Nonconformists in their burial grounds, see *Moreland* v. *Richardson*, [1856] 22 B. 596; 2 Jur. N. S. 726; 25 L. J. Ch. 883; 24 B. 33; 26 L. J. Ch. 690; 3 Jur. N. 1189; and *Reg.* v. *Sharpe*, [1857] Dea. & Bell 160; 7 Cox C. C. 214; 3 Jur. N. S. 192; 26 L. J. M. C. 47.

By the 59 Geo. III. c. 134, s. 39, the Church Building Commissioners may, with consent of two justices, and on notice given according to 55 Geo. III. c. 68, alter, repair, pull down and rebuild the walls or fences of any existing burial ground of any parish or chapelry; and may also stop up and discontinue, alter or vary, any entrance or gate leading into any burial ground, and the paths, footways, and passages into, through, or over the same, as to them may appear useless, or as they shall think fit.

By s. 6, sub-s. 1 (*b*) of the Local Government Act, 1894 (*post*, p. 324), there are transferred to the parish council the powers, &c., of the churchwardens, inclusive of the obligation of the churchwardens with respect to maintaining and repairing

closed churchyards wherever the expenses of such maintenance and repair are repayable out of the poor rate under the Burials Act, 1855, provided that such obligations shall not in the case of any particular parish be deemed to attach unless or until the churchwardens, subsequently to the passing of that Act, shall give a certificate as in the Burial Act, 1855, provided, in order to obtain the repayment of such expenses out of the poor rate. Apparently, if the churchyard be maintained and repaired by voluntary subscription, its control by a parish council can be avoided. In parishes where there is no parish council, s. 19 of the Local Government Act, 1894 (*post*, p. 342), gives various rights, &c., to the parish meeting, subject to the terms of any grouping order. It seems doubtful whether that section confers on a parish meeting any rights or obligations with respect to churchyards. See notes, *post*, p. 327, to s. 4 of that Act. 18 & 19 Vict. c. 128.

XIX. Nothing in this Act contained shall in anywise abridge, lessen, or defeat any power, right, or privilege of any local board of health being the burial board of a borough created or to exist under or by virtue of any local Act of Parliament. Act not to abridge powers of local boards of health, &c.

XX. Any local board of health acting as or created a board under or by virtue of the powers of any local Act of Parliament shall and may have and exercise all the powers, rights, and privileges which by this Act or by the secondly recited Act are or can or may be had, enjoyed, or exercised by any burial board therein named. Local boards of health to exercise powers of this Act.

By s. 4 of 20 & 21 Vict. c. 81, *post*, p. 201, a local board of health whose district is co-extensive with a district for which it is proposed to provide a burial board, may, upon petition, be constituted a burial board by order in council.

A local board of health or other local authority may provide a reception house for the dead and make bye-laws with respect to the management of the same, and, on application, make arrangements for interment of any corpse received therein (38 & 39 Vict. c. 55, s. 141). And by the Public Health (Inter-

18 & 19 Vict. c. 128.

ments) Act, 1879 (42 & 43 Vict. c. 31), these powers are extended to the provision and maintenance of a cemetery (subject to certain provisions of the principal Act), for which purposes the Cemeteries Clauses Act (10 & 11 Vict. c. 65) is incorporated. The local authority may be constituted the burial board for part of its district by virtue of 38 & 39 Vict. c. 55, Schedule 5. See s. 1 of 23 & 24 Vict. c. 64, p. 231, *infra.*

Town councils in boroughs may become burial boards (see 17 & 18 Vict. c. 87, p. 157).

Acts to be construed together.

XXI. The said Acts of the fifteenth and sixteenth, sixteenth and seventeenth, and seventeenth and eighteenth years of Her Majesty, and this Act, shall be read and construed together as one Act.

20 & 21 VICT. C. 35.

20 & 21 Vict. c. 35.

An Act to amend an Act passed in the fifteenth and sixteenth years of the Reign of her present Majesty Queen Victoria, intituled "An Act to amend the Laws concerning the Burial of the Dead in the Metropolis," so far as relates to the City of London and the Liberties thereof. [10th August, 1857.]

15 & 16 Vict. c. 85.

WHEREAS an Act was passed in the session of Parliament holden in the fifteenth and sixteenth years of the reign of her present Majesty Queen Victoria, intituled "An Act to amend the Laws concerning the Burial of the Dead in the Metropolis," containing provisions for the appointment of burial boards in the several parishes in the metropolis, and conferring on such burial boards various powers and

authorities to be exercised in some cases by the board alone, and in other cases by the boards with the approval of the vestries of their respective parishes: 20 & 21 Vict. c. 35.

And whereas it was by the said Act enacted, that the provisions therein contained for the appointment of burial boards should not apply to any parish within the limits of the city of London, and the liberties thereof, but it should be lawful for the mayor, aldermen, and commons of the city of London, in common council assembled, if and when they should see fit so to do, to authorise and direct the commissioners of sewers of the city of London to exercise for the said city and liberties all the powers and authorities vested in the burial boards under the said Act; and thereupon such commissioners should have and exercise for and on behalf of the said city and liberties all such powers and authorities as were thereby vested in the burial board for any parish, or which might be exercised by such board with the approval of the vestry:

And whereas the commissioners of sewers of the city of London have been authorised by the said mayor, aldermen, and commons, in common council assembled, to exercise the powers and authorities vested in the burial boards under the said Act, and have provided and constructed a large and spacious cemetery in the parish of Little Ilford in the county of Essex at an expense of seventy-five thousand pounds:

And whereas there are more than one hundred parishes within the city of London and the liberties thereof, and it has been found impracticable to obtain the requisite consents of all the vestries of such parishes to the uniform exercise of such powers or authorities by the said commissioners:

And whereas under the provisions contained in the thirty-seventh section of the said Act (by which section power is given to the vestry of any parish, with consent

20 & 21 Vict. c. 35.

of the bishop of the diocese, to revise and vary the fees payable to the incumbent under the provisions of the said Act), a table of fees to be paid to incumbents upon interments which shall take place in the consecrated portion of the said cemetery at Little Ilford has been agreed to by the major part in number of the vestries of the parishes within the city of London and the liberties thereof, which table of fees has been approved of by the bishop of the diocese and is contained in the Schedule to this Act:

And whereas it is expedient that the table of fees so agreed to should be made to apply to the whole of the parishes within the city of London and the liberties thereof, and that the said Act should be amended by making the consent or approval of the major part in number of the vestries of the several parishes within the city of London and the liberties thereof sufficient to enable the commissioners of sewers of the city of London to exercise any power or authority conferred upon them by the said Act, which requires for the exercise thereof the approval or consent of all the vestries of such parishes; and also that the said Act should be amended in manner hereinafter mentioned:

And whereas the purposes aforesaid cannot be effected without the authority of Parliament: may it therefore please your Majesty that it may be enacted: and be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

The preamble was repealed by the Statute Law Revision Act, 1892.

This Act is to be read together with the other Burial Acts as one Act, and the series of the Burial Acts may be referred to as the Burial Acts, 1852 to 1885 (Short Titles Act, 1896, 59 & 60 Vict. c. 14). For a list of the Burial Acts, see note to s. 2 of 34 & 35 Vict. c. 33, *infra*, p. 237.

20 & 21 Vict. c. 35.

The fees in schedule to be the fees payable to incumbents.

I. The fees enumerated in the Schedule to this Act shall be the fees which the incumbents of the parishes within the city of London and the liberties thereof shall be entitled to receive upon all interments in the consecrated portion of the said cemetery at Little Ilford, whether of the remains of parishioners or inhabitants of the said parishes, or of any other persons, and the same fees shall be in satisfaction of all claims on the part of such incumbents to fees of every description, whether in respect of burial in vaults or graves, or of the erection of monuments, gravestones, or tablets, or of monumental inscriptions in the said cemetery.

These fees are to be paid quarterly by the Commissioners of Sewers to the persons appointed by the major part of the incumbents to receive them. See s. 5, *infra*, p. 196.

The words "parishioner" and "inhabitant" are defined in s. 8, *infra*, p. 197.

Approval of a majority of vestries in the city of London to be sufficient.

II. When and as often as the consent or approval of the vestries of the several parishes within the limits of the city of London and the liberties thereof is by the said recited Act required for the purpose of enabling the commissioners of sewers of the city of London to exercise any power or authority given to or vested in them by the said Act, or to execute any act, deed, matter, or thing under the authority of the said Act, or to confirm or render valid any act, deed, matter, or thing, made or done, or agreed or proposed to be made or done, by the said commissioners, then and in every case the consent or approval of the major part in number of the vestries of the several parishes within the said city and liberties shall be sufficient to enable the said commissioners to exercise any such power or authority, or to do or execute any such act, deed, matter, or thing as aforesaid, and to confirm and render

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valid any act, deed, matter, or thing made or done, or agreed or proposed to be made or done, by them, and shall be as valid and effectual for all the purposes of the said Act as if all the vestries of the said parishes within the city of London and the liberties thereof had actually consented to or approved thereof, or had confirmed the same: Provided that the parishes united under the provisions of the Act of the twenty-second year of Charles the Second, chapter eleven, or united for ecclesiastical purposes by the provisions of that, or any other Act or Acts, shall, for the purposes of this Act and the said recited Act, be and be deemed one parish.

The Commissioners of Sewers of the City of London are made the burial board for the parishes in the City by s. 43 of 15 & 16 Vict. c. 85, *ante*, p. 133.

By s. 110 of the City of London Sewers Act, 1848 (11 & 12 Vict. c. clxiii.), it was provided that in the City, after the passing of the Act, all interments should be at a depth of at least five feet, and penalties were imposed for breach of the regulation. By the City Sewers Act, 1851 (14 & 15 Vict. c. xci.), ss. 32–36, provision is made for the appropriation of churchyards and burial grounds in the City of London, in which interment of the dead has ceased, for public improvements. Power is given to the relative of a deceased person buried in such churchyard, with the consent of the incumbent and subject to the regulations of the Commissioners of Sewers, and without a faculty, to remove the body of such deceased person and bury it without the City. The Commissioners of Sewers may plant, pave, or cover over such closed churchyard, and even remove the soil to level the surface of the churchyard, subject to the consent of the Bishop of London. As to the preservation of Bunhill Fields burial ground as an open space, and its ornamentation and maintenance, see 30 & 31 Vict. c. 38.

22 Car. II. c. 11, was an Act passed after the Fire of London, for the rebuilding the City of London. By ss. 62 and 63 of the said Act it was enacted that in future there should be in the City of London fifty-one parishes, several

parishes being united into one parish, with the church of one of the united parishes for parish church. In the following list the united parishes are bracketed together, the church of the first parish in the bracket being the parish church. 20 & 21 Vict. c. 35.

Allhallows, Lombard Street.
St. Bartholomew, Exchange.
St. Bridget, alias Brides.
St. Bennet's, Fink.
St. Michael's, Crooked Lane.
St. Christopher's.
St. Dionis, Back-Church.
St. Dunstan's-in-the-East.
St. James', Garlick-hithe.
St. Michael, Cornhill.
St. Michael, Bassishaw.
St. Margaret, Loathbury.
St. Mary, Aldermanbury.
St. Martin, Ludgate.
St. Peter's, Cornhill.
St. Stephen's, Coleman Street.
St. Sepulchre's.
Allhallows, Bread Street. / St. John Evangelist.
Allhallows the Great. / Allhallows the Less.
St. Alban's, Wood Street. / St. Olave's, Silver Street.
St. Anne and St. Agnes. / St. John Zachary.
St. Austin's. / St. Faith's.
St. Andrew, Wardrobe. / St. Anne, Blackfriars.
St. Antholins. / St. John Baptist.
St. Bennet, Gracechurch. / St. Leonard, Eastcheap.
St. Bennet, Paul's Wharf. / St. Peter, Paul's Wharf.
Christ Church. / St. Leonard, Foster Lane.
St. Edmund, the King. / St. Nicholas, Acons.
St. George, Botolph Lane. / St. Botolph, Billingsgate.
St. Lawrence, Jury. / St. Magdalen's, Milk Street.
St. Magnus. / St. Margaret, New Fish Street.
St. Michael, Royal. / St. Martin's, Vintry.
St. Matthew, Friday Street. / St. Peter's, Cheap.
St. Margaret, Pattens. / St. Gabriel, Fenchurch.

III. The provisions in the said recited Act contained with reference to fees payable to incumbents, churchwardens, and others for parochial or other purposes, and also with reference to the powers given to vestries of revising and varying, with the consent of the bishop, the fees payable to incumbents, clerks, and sextons, or of substituting fixed payments in lieu thereof, which provisions are comprised in the thirty- Certain sections in recited Act repealed as to the city of London.

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second, thirty-third, thirty-fifth, thirty-sixth, thirty-seventh, and fiftieth sections of the said Act, shall not apply to parishes situated within the city of London or the liberties thereof.

These sections are set out, *ante*, pp. 122–129, and p. 141.

Commissioners, acting as burial board, with the approval of the major part of the vestries, to settle fees payable to churchwardens, &c.

IV. It shall be lawful for the commissioners of sewers of the city of London, acting as burial board for the several parishes within the city and the liberties thereof, with the approval of the major part in number of the vestries of such parishes, to settle and determine whether any and what fees shall be payable to the churchwardens or to the clerk or sexton of any parish within the city of London or the liberties thereof, or to any trustees or other persons for any parochial or other purpose whatever, on any interment, or for any monument, gravestone, tablet, or monumental inscription in any burial ground already provided or which may hereafter be provided by the said commissioners in pursuance of the powers contained in the said Act, and such fees (if any) as shall be so settled and determined shall be paid to the commissioners, and shall be paid over by them to the parties for the time being entitled to receive the same.

As to payments to churchwardens, &c., in parishes outside the City of London for parochial purposes, see 15 & 16 Vict. c. 85, s. 36, *ante*, p. 128.

Fees to be paid by the commissioners.

V. All fees payable under the provisions of this Act to incumbents of parishes within the city of London and the liberties thereof shall be paid by the commissioners of sewers of the city of London, by quarterly payments in each year, to such person or persons as shall by such incumbents, or the major part of them, be appointed from time to time to receive the same, and such fees shall be applied according to a scheme to be agreed upon by such

incumbents, or the major part of them, with the consent of the bishop of the diocese. 20 & 21 Vict. c. 35.

See note to s. 1, *ante*, p. 193.

Commissioners to settle fees for burial of persons not residing in London.

VI. It shall be lawful for the said commissioners, subject and without prejudice to the fees payable to incumbents under the provisions of this Act, and subject to the approval required by the seventh section of the Act of eighteenth and nineteenth Victoria, chapter one hundred and twenty-eight, to settle a scale of fees for the burial in the cemetery at Little Ilford aforesaid of persons not residing within the city of London or the liberties thereof, and from time to time to revise and vary the same.

The fees in the consecrated and unconsecrated part of a burial ground must be the same, apart from any payment to the incumbent, &c. See 20 & 21 Vict. c. 81, s. 17, *infra*, p. 216.

The fees are subject to the approval of the Home Secretary. See 18 & 19 Vict. c. 128, s. 7, *ante*, p. 173.

Chaplains of cemetery to conform to regulations of commissioners.

VII. The chaplain or chaplains who for the time being shall have been or shall hereafter be appointed under the thirty-ninth section of the said recited Act, by the incumbents of the parishes within the city of London and the liberties thereof, for the performance of burials in the consecrated part of the said cemetery, shall conform to all such regulations of the commissioners of sewers for the city of London as shall not interfere with the performance of the funeral service according to the order of the united Church of England and Ireland.

Interpretation of terms.

VIII. In this Act and in the said recited Act, so far as same applies to the city of London and the liberties thereof, the words "parishioner" or "inhabitant" shall mean a person inhabiting a house or dying in one of the parishes in the city of London or the liberties thereof;

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and when such house shall be situated in more than one parish, the parish in which the greater part of such house is situated shall be deemed to be the parish of which the person inhabiting the same is a parishioner or inhabitant.

Expenses of Act.

IX. *All the costs, charges, and expenses of obtaining and passing this Act shall be defrayed out of the consolidated rate authorised to be made by the City of London Sewers Act*, 1848.

Repealed by the Statute Law Revision Act, 1875.

THE SCHEDULE.

	£	s.	d.
For each Burial in a Catacomb in consecrated ground	0	15	0
For each Burial in a Vault in ditto . . .	0	10	0
For each Burial in a Brick Grave in ditto . .	0	7	6
For each Burial in a Private Grave in ditto . .	0	5	0
For each Burial in a Common Grave in ditto . .	0	2	6
For each Burial of a Pauper in ditto . . .	0	1	0

20 & 21 Vict. c. 81.

20 & 21 VICT. C. 81.

An Act to amend the Burial Acts.

[25th August, 1857.]

15 & 16 Vict. c. 85.

16 & 17 Vict. c. 134.

WHEREAS an Act was passed in the session holden in the fifteenth and sixteenth years of Her Majesty (chapter eighty-five), "to amend the laws concerning the burial of the dead in the metropolis;" and an Act was passed in the session holden in the sixteenth and seventeenth years of Her Majesty (chapter one hundred and thirty-four), "to amend the laws concerning the burial of the dead in England beyond the limits of the metropolis, and to amend the Act

concerning the burial of the dead in the metropolis;" and an Act was passed in the session holden in the seventeenth and eighteenth years of Her Majesty (chapter eighty-seven), "to make further provision for the burial of the dead in England beyond the limits of the metropolis;" and Acts were passed in the session holden in the eighteenth and nineteenth years of Her Majesty (chapters seventy-eight and one hundred and twenty-eight), "to amend the laws concerning the burial of the dead in England;" and whereas it is expedient to amend the said Acts: Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

20 & 21 Vict. c. 81.

17 & 18 Vict. c. 87.

18 & 19 Vict. cc. 78, 128.

The preamble was repealed by the Statute Law Revision Act, 1892.

Approval of vestries of majority of parishes sufficient for acts done for burial boards acting for more than two parishes.

I. All acts authorised to be done by any burial board, with the approval, sanction, or authority of the vestry or vestries of the parish or parishes for which such board is constituted, may, where a joint burial board is constituted for more than two parishes, be done with the approval, sanction, or authority (as the case may require) of the vestries of the majority of such parishes.

Vestries of parishes may concur in providing a burial ground for the common use of their parishes, and the burial boards of such parishes may act as a joint burial board under 15 & 16 Vict. c. 85, s. 23, *ante*, p. 114. As to burial boards for united parishes, see 18 & 19 Vict. c. 128, s. 11, *ante*, p. 176, and *The Burial Board of Amersham* v. *Ives*, [1862] 7 L. T. N. S. 244, and *R.* v. *Wright*, [1861] 5 L. T. N. S. 345. As to approval of the majority of vestries in the City of London, see 20 & 21 Vict. c. 35, s. 2, *ante*, p. 193.

Joint burial boards may

II. Where the vestries of two or more parishes have agreed to provide one burial ground for the common

20 & 21 Vict. c. 81. be dissolved.

use of such parishes, such vestries may, at any time before such burial ground has been provided, determine the union between such parishes under such agreement, and upon such union being so determined all the provisions of the said Acts and this Act shall be applicable with regard to such parishes and the respective burial boards thereof as if such union had not been formed, save that any expenses already properly incurred by the joint burial board for such parishes shall be defrayed as provided by the said Acts.

It would seem that the consent of both or all the vestries would have to be obtained to determine the union. As to joint committees of parish councils under the Local Government Act, 1894, see s. 57 of that Act, *infra*.

Burial boards may provide more than one burial ground.

III. Any burial board may, if they see fit, with the approval of one of Her Majesty's principal secretaries of state, provide more than one burial ground, and may if they see fit, with such approval, instead of setting apart a portion of any burial ground for the purpose of such portion being used as unconsecrated ground, provide separate and distinct grounds to be used respectively as consecrated and unconsecrated burial grounds: where before the passing of this Act any burial board has provided more than one burial ground, or has (instead of setting apart a portion of any burial ground for the purpose of being used as unconsecrated ground) provided separate and distinct grounds as consecrated and unconsecrated burial grounds, such burial board shall be deemed to have acted lawfully and in accordance with the said Acts.

By 15 & 16 Vict. c. 85, s. 30, *ante*, p. 120, and 16 & 17 Vict. c. 134, s. 7, *ante*, p. 153, a burial board could reserve a part of the burial ground which should not be consecrated. If the ratepayers resolve that land for a new burial ground

should be conveyed and settled as the old burial ground or churchyard of the parish, within ten years thereafter the vestry may provide a burial ground which shall be unconsecrated (18 & 19 Vict. c. 128, s. 10), *ante*, p. 175. No wall or fence need be erected between consecrated and unconsecrated portions of a burial ground, but stone or iron boundary marks must be maintained. See s. 11, *infra*, p. 212. 20 & 21 Vict. c. 81.

Local board of health may, by order in council, be constituted a burial board.

IV. In case it appear to Her Majesty in council, upon the petition of the local board of health of any district established under the Public Health Act, or upon the petition of any commissioners elected by the ratepayers, and acting under or by virtue of the powers of any local Act of Parliament for the improvement of any town, parish, or borough, stating that the district of such local board of health or of such commissioners is co-extensive with a district for which it is proposed to provide a burial ground, and that no burial board has been appointed for such district, and that an order in council has been made for closing all or any of the burial grounds within the said district, it shall be lawful for Her Majesty, with the advice of her privy council, in case Her Majesty see fit so to do, to order that such local board shall be a burial board for the district of such local board, or that such commissioners shall be a burial board for the district of such commissioners, and thereupon such local board or such commissioners, as the case may be, shall be a burial board for such district accordingly; and the powers and provisions of the Acts hereinbefore mentioned (except the provisions relating to the constitution or appointment and resignation of members of burial boards), and the provisions herein contained, shall extend to the district of such board, and to such board, or to the district of such commissioners, and to such commissioners, and to any burial ground and places for the reception of the bodies of the dead

20 & 21 Vict. c. 81.

previously to interment which may be provided by such board or by such commissioners, in like manner as to any parish or parishes and the burial board thereof, and any burial ground and any such places as aforesaid provided by such last-mentioned board; save that no approval, sanction, or authorisation of any vestry shall be requisite: Provided always, that notice of such petition, and of the time when it shall please Her Majesty to order the same to be taken into consideration by the privy council, shall be published in the *London Gazette*, and in one of the newspapers usually circulating in the district of such local board or of such commissioners, one month at least before such petition is so considered: provided also, that this enactment shall not apply to any such district as aforesaid exclusively consisting of the whole or part of one corporate borough within the meaning of the Public Health Act, 1848.

Urban sanitary districts are, by the Public Health Act, 1875, boroughs, Improvement Act districts, and Local Government districts; these were subject to the jurisdiction of the borough councils, improvement commissioners, or local boards respectively, which were defined as urban sanitary authorities.

By s. 21 of the Local Government Act, 1894, *infra*, p. 344, urban sanitary authorities shall be called urban district councils, and their districts shall be called urban districts; by s. 62 of the same Act, *infra*, p. 369, where there is in any urban district, or any part of an urban district, any authority constituted under any of the adoptive Acts (which include the Burial Acts), the council of that district may resolve that the powers, duties, property, debts, and liabilities of that authority shall be transferred to the council as from the date specified in the resolution, and upon that date the same shall be transferred accordingly, and the authority shall cease to exist, and the council shall be the successors of that authority. The adoptive Acts cannot be adopted for any part of an urban district without the approval of the council of that district.

The borough council of a borough may become a burial

board, see 17 & 18 Vict. c. 87, ss. 1 and 2, *ante*, pp. 158 and 159; as to the powers of a local board acting as a burial board under a local Act of Parliament, see 18 & 19 Vict. c. 128, ss. 19 and 20, *ante*, p. 189. 20 & 21 Vict. c. 81.

The Public Health Act, 1848, was repealed by the Public Health Act, 1875 (s. 343), and by s. 313 of the latter Act, where in any Act an Act repealed by the Public Health Act, 1875, is mentioned or referred to, such Act shall be read as if the Public Health Act, 1875, were referred to.

By s. 310 of the Public Health Act, 1875, provision is made for the transfer of the powers, rights, duties, &c., of improvement commissioners or a local board to the council of the borough, in the case where the district of such commissioners or local board becomes a borough.

See 21 & 22 Vict. c. 98, s. 49, as to the vestry having the power to decide whether the local board shall be the burial board. This power is now subject to the provisions of s. 62 of the Local Government Act, 1894, set out above.

A separate rate for burial purposes may be made by local boards of health or improvement commissioners acting as burial boards under 23 & 24 Vict. c. 64, which see *infra*, p. 229; and by 25 & 26 Vict. c. 100, such improvement commissioners are empowered to borrow money on mortgage of such burial rate (see *infra*, p. 234).

Burial board may be established for a district not maintaining its own poor, and which has had no separate burial ground.

V. The vestry, or meeting in the nature of a vestry, of any parish, new parish, township, or other district not separately maintaining its own poor, and which has had no separate burial ground, may appoint a burial board; and such vestry or meeting, and the burial board appointed by it, shall exercise and have all the powers which they might have exercised and had under the said Acts and this Act if such parish, new parish, township, or district had had a separate burial ground before the passing of the said Act of the eighteenth and nineteenth years of Her Majesty: Provided always, that all the powers of any other vestry or meeting and burial board, if any, shall then cease and

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determine, so far as relates to such parish, new parish, township, or district as aforesaid; and until a burial ground shall be so provided as aforesaid and consecrated for any new parish or district created or to be created pursuant to the provisions of the sixth and seventh Victoria, chapter thirty-seven, the seventh and eighth Victoria, chapter ninety-four, and the nineteenth and twentieth Victoria, chapter one hundred and four, or any or either of them, and to which the said Acts, or any or either of them, may apply, the incumbent of such new parish or district (if any burial ground has been or shall be provided under the herein recited Acts for the burial of the dead, or any or either of them, for any parish or parishes out of rates to which such new parish or district, or any part thereof, shall have contributed or contribute or be liable) shall, with respect to the burial in such last-mentioned burial ground of the remains of the parishioners or inhabitants of such new parish or district, or of such part thereof as shall have contributed or contribute as aforesaid, as the case may be, perform the same duties, and have the same rights, privileges, and authorities, and be entitled to the same fees, and also the clerk and sexton of such new parish or district shall, when necessary, respectively perform the same duties, and be entitled to the same fees, in respect of such burials, as if the said burial ground were exclusively the burial ground of such new parish or district, subject nevertheless to all provisions to which the incumbents, clerks, and sextons of original parishes are respectively subject in and by the said Burial Acts, or any or either of them: Provided also, that nothing herein contained shall affect the rights or privileges of any existing incumbent, clerk, or sexton without the consent of such incumbent, clerk, or sexton respectively.

This section amends s. 12 of 18 & 19 Vict. c. 128; see the notes to that section, *ante*, p. 179. The words "district not separately maintaining its own poor," must be held to mean an area similar in nature to a parish or township. That is the view acted upon by the Home Office. 20 & 21 Vict. c. 81.

In *Reg.* v. *Overseers of Walcot St. Swithin*, [1862] 31 L. J. M. C. 221; 2 B. & S. 571; 6 L. T. N. S. 325; 10 W. R. 602, it was held that under this section a district parish formed under 48 Geo. III. c. 45, for ecclesiastical purposes, might form a burial board for its own district, notwithstanding a burial board had already been formed for the entire common law parish.

In the above case a doubt was expressed whether in the event of the appointment of a board under this section subsequent to the constitution of a board for the entire parish, the powers of such original board would not be kept alive with reference to the general liability that attaches to the whole rates of the parish.

As to fees recovered by incumbent of a new parish in an action against the burial board, see *Cronshaw* v. *Wigan Burial Board*, [1873] 25 L. T. N. S. 536, affirmed on appeal, L. R. 8 Q. B. 217; 42 L. J. Q. B. 137; 28 L. T. N. S. 283, Ex. Ch.

The precinct or chapelry of N. became, long before 1859, by augmentation of Queen Anne's bounty, a perpetual curacy, and was treated as a separate and distinct parish for all civil purposes—baptisms, marriages, and burials being performed in the chapel and burial ground thereto belonging. In 1850 a portion of the precinct of N. was assigned to St. John's Church, Southall, which district became under 6 & 7 Vict. c. 37, and other Acts, a new parish for all ecclesiastical purposes.

By order in council of May, 1859, the chapelry of N., except the part assigned to St. John's, was constituted a separate parish for ecclesiastical purposes, and the chapel became the parish church of N. In 1860 a piece of land adjoining St. John's Church, which had been conveyed to the Ecclesiastical Commissioners for the purpose of a burial ground for that district (there having been previously no burial ground within the district, and the parishioners thereof having been buried in the churchyard of N.), was consecrated as such burial ground and used as such burial ground both for the

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parish of St. John and the perpetual curacy of N. The sexton of St. John's performed the duties and received the fees for interments in the churchyard of St. John's. By an order in council of September, 1890, a portion of the parish or perpetual curacy of N. was assigned to St. John's and became, under the provisions of 32 & 33 Vict. c. 94, s. 1, a part of that parish.

In 1881 a burial board was formed for the whole poor law parish of N. (including St. John's and the perpetual curacy of N.), and they provided a cemetery for the whole district, the churchyard at N. being closed for burials.

The statute under which the orders in council were made (6 & 7 Vict. c. 37) makes provision for all other persons affected by the change, but is silent as to the position of the sexton and his fees.

Held that the plaintiff (who had been appointed the sexton of N. in 1865) was not entitled to fees in respect of burials in the cemetery from that portion of the parish of N. which had been annexed to the parish of St. John's, but that the burial board had a right to apportion the burial fees in accordance with the limits of the two parishes (*White* v. *The Burial Board for Norwood, Middlesex*, [1885] 16 Q. B. D. 58).

Where a district of a parish is entitled under s. 12 of 18 & 19 Vict. c. 128, though not maintaining its own poor, to appoint a separate burial board, the rest of the parish, minus the district, may appoint a burial board (*Viner* v. *Churchwardens, &c. of Tonbridge*, [1859] 2 E. & E. 9; 28 L. J. M. C. 251; 7 W. R. 553).

And in *R.* v. *Tonbridge*, [1884] 13 Q. B. D. 339, it was held that the existence of a legally constituted burial board for the whole of a parish did not prevent the vestry of an ecclesiastical district formed out of such parish under 1 & 2 Will. IV. c. 38, and not separately maintaining its own poor, from legally appointing a burial board for such district.

A sexton of a chapelry district constituted under 59 Geo. III. c. 134, s. 16, which is afterwards formed into a district parish under the powers conferred upon the Ecclesiastical Commissioners under ss. 11 and 14 of 19 & 20 Vict. c. 104, is by virtue of the proviso in this section entitled to the fees in respect of the burial of inhabitants in a burial ground provided

for the parish (*Ormerod* v. *The Blackburn Burial Board*, [1873] 28 L. T. N. S. 438). 20 & 21 Vict. c. 81.

Ordinary of diocese may consecrate whole or part of land belonging to any parish for the burial of poor persons.

VI. Where the guardians of any parish or union are possessed of any land suitable to the purposes of a burial ground, and the Poor Law Board shall consent to the same being appropriated to the reception of the dead bodies of any poor persons whom such guardians shall be authorised or required by law to bury, it shall be lawful for the ordinary of the diocese wherein such land shall be situated, if he see fit, to consecrate the whole or a part of such land for burial purposes, and after consecration the guardians may lawfully direct any such dead body as aforesaid to be buried therein; and the land so consecrated shall not thenceforth be used for any other purposes than for burials according to the rites of the united Church of England and Ireland, and shall be kept in decent order; and the fences thereof, and any building or any other erection therein or adjoining thereto used for the performance of the burial service, shall be maintained in good repair by the guardians, out of the common fund of such parish or union: Provided nevertheless, that the guardians shall not be authorised to direct the body of any poor person to be buried in such grounds who, or whose husband, wife, or next of kin, shall, by letter addressed to the master of the workhouse or otherwise, have expressly desired burial to take place elsewhere.

With reference to burial of poor persons, see Introduction, *ante*, p. 39, and 18 & 19 Vict. c. 79, and the other Poor Law Acts, set out *infra*.

By s. 2 of 43 & 44 Vict. c. 41, *post*, p. 241, the burial of poor persons in consecrated ground may take place without the service of the Church of England.

Provision for transfer

VII. Where a burial ground has been provided for any parish under any of the Acts commonly referred to

20 & 21 Vict. c. 81.

to a burial board of a burial ground provided under Church Building Acts.

or known as the Church Building Acts, and the same has been consecrated, and any money expended in providing such burial ground has been borrowed on the security of the church rates, it shall be lawful for the incumbent of the parish, with the consent of the ordinary and the burial board of such parish, or of any borough or district in which such parish is wholly or in part comprised, by instrument in writing under the hands and seals of such incumbent and ordinary, and under the seal of the said burial board, to declare that, in consideration of the payment of the debt by the said burial board, or of such sum as shall be mutually agreed upon, with the consent of the persons, signified in writing under their hands, to whom two-thirds of such debt is due, the said burial ground shall be vested in and be under the care and management of such burial board, and thereupon the same shall be vested in and be under the care and management of such board, and shall be subject to the provisions of the hereinbefore recited Acts and this Act applicable to a consecrated burial ground or the consecrated part of any burial ground provided by any burial board; and any money borrowed as aforesaid, and remaining owing, and the interest due and to become due thereon, and all costs and expenses occasioned by the non-payment thereof, or incurred in providing such burial ground, and then remaining unpaid, shall be charged on and paid out of such rates or fund as under the said last-mentioned Acts and this Act would be chargeable with the expense of providing a burial ground by such board, and such declaration as aforesaid shall be registered in the registry of the diocese; and such board may, with the approval of the vestry, enlarge such burial ground, by the addition of ground to be used for burials otherwise than according to the rites of

the Church of England, and to be used subject to the provisions of the Acts herein recited and of this Act in respect to the unconsecrated portions of burial grounds. 20 & 21 Vict. c. 81.

The Church Building Acts are, by the Short Titles Act, 1896 (59 & 60 Vict. c. 14), to be cited as the Church Building Acts, 1818 to 1884. These are set out *infra*, p. 482.

Compulsory church rates were abolished by 31 & 32 Vict. c. 109, s. 1, except where a sum of money is due upon the security of such rates and until it is paid off or liquidated (s. 3).

"The rates or fund chargeable with the expense of providing a burial ground" are provided for in 15 & 16 Vict. c. 85, s. 19, *ante*, p. 110; 17 & 18 Vict. c. 87, s. 3, *ante*, p. 160; 18 & 19 Vict. c. 128, ss. 11 and 13, *ante*, pp. 176 and 180. See also s. 22, *infra*, p. 219, 21 & 22 Vict. c. 98, s. 49 (which is re-enacted in Public Health Act, 1875, Sched. V., part iii.), *infra*, and 23 & 24 Vict. c. 64, s. 1, *infra*, p. 231.

VIII. It shall and may be lawful for the vestry of any parish in which any burial ground closed by order in council may be situate, and which does not belong to such parish, by resolution of the vestry at a meeting called for that purpose, to purchase such burial ground, and from the time of such purchase such burial ground shall belong to such parish, and be subject to all the conditions affecting the burial grounds of the parish in which the same is situate. Vestry of parish in which burial ground is closed may purchase such burial ground if not belonging to parish.

This section is an extension of s. 51 of 15 & 16 Vict. c. 85, *ante*, p. 141, by which power is given to the incumbent or churchwardens to convey the chapel belonging to a closed churchyard to the parish in which it is situated.

As to the property in a closed churchyard or burial ground, see the note to s. 1 of 15 & 16 Vict. c. 85, *ante*, p. 94.

As to acquisition of a closed burial ground for open spaces, see 44 & 45 Vict. c. 34, s. 4, as amended by 50 & 51 Vict. c. 32, *infra*, p. 420.

IX. And whereas by the said Act of the eighteenth and nineteenth years of Her Majesty, chapter one Burial boards not

20 & 21 Vict. c. 81.

to be appointed for united parishes, &c., in cases provided for by 18 & 19 Vict. c. 128, without consent of secretary of state, where one of the places separately maintains its own poor or has a burial ground.

hundred and twenty-eight, it is enacted, that where a parish or place has been united with any other parish or place, parishes or places, for all or any ecclesiastical purposes, or where two or more parishes or places have heretofore had a church or a burial ground for their joint use, or where the inhabitants of several parishes or places have been accustomed to meet in one vestry for purposes common to such several parishes or places, it shall be lawful for the vestry, or any meeting in the nature of a vestry, of such several parishes or places, in any of the cases aforesaid, and whether any one or more of such parishes or places do or do not separately maintain its own poor, to appoint a burial board, and from time to time to supply vacancies therein, and to exercise the same powers of authorisation, approval, and sanction in relation to such burial board, and such other powers as, under the Acts therein recited and that Act, are vested in the vestry of a parish or place separately maintaining its own poor: where any of the several parishes or places under the circumstances provided for in the said enactment separately maintains its own poor, or has a separate burial ground, it shall not be lawful for the vestry, or meeting in the nature of a vestry, of such several parishes or places, to appoint a burial board under the said enactment without the approval of one of Her Majesty's principal secretaries of state; and in case it appear to the secretary of state that any such parish or place has a sufficient burial ground, or that otherwise it would not be expedient that the powers given by the said enactment should be exercised in relation to such parish or place, the secretary of state may direct that such parish or place shall be excepted from the operation of the said enactment, and thereupon the same shall be excepted accordingly; and the inhabitants of the remain-

ing parish or parishes, place or places, may assemble in vestry, or in a meeting in the nature of a vestry, from time to time, and in such vestry or meeting may proceed in like manner under the said Acts and this Act in all respects as if the inhabitants of such last-mentioned parish or parishes, place or places, exclusively had a vestry for their common purposes, and were wholly unconnected with the parish or place so excepted. 20 & 21 Vict. c. 81.

The approval of the secretary of state must be given before the appointment of the burial board (34 & 35 Vict. c. 33, s. 1, p. 236). See notes to s. 11 of 18 & 19 Vict. c. 128, *ante*, p. 177.

X. It shall be lawful for Her Majesty, by order made by and with the advice of her privy council, on the representation of one of Her Majesty's principal secretaries of state, from time to time to establish such regulations as to Her Majesty may seem proper for the protection of the public health, and for the maintenance of public decency, in respect of all burials in common graves in any cemeteries named in Schedule (B) to the Act fifteenth and sixteenth Victoria, chapter eighty-five, and in respect of the like burials in any cemetery established under the authority of any local Act of Parliament: and every such order in council shall be published in the *London Gazette*; and all persons having the care of such cemeteries and burial grounds and places shall conform to and obey such regulations; and any such person who shall violate or wilfully neglect to observe any of such regulations shall, on summary conviction thereof before two justices of the peace, forfeit and pay any sum not exceeding ten pounds: Provided always, that no such representation shall be made in relation to any cemetery or burial ground until ten days previous notice in writing of the intention to make such representation shall have been given to the person or one of the Orders in council may be made for regulating burial grounds, &c.

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persons having the control or care of such cemetery or burial grounds.

For recovery of penalties, see note to s. 2 of 18 & 19 Vict. c. 128, *ante*, p. 168.

As to the Home Secretary's power to make regulations, see s. 44 of 15 & 16 Vict. c. 85, *ante*, p. 136.

No wall or fence required between the consecrated and unconsecrated portions of burial ground. Boundary marks to be provided.

XI. It shall not be necessary to erect or maintain any wall or fence between the consecrated and the unconsecrated portions of any burial ground provided under the hereinbefore recited Acts and this Act, or any of them: Provided always, that in the case of any burial ground where there shall be no such wall or fence, it shall be the duty of the burial board having the care of such burial ground to place, and from time to time to repair and renew, such boundary marks of stone or iron as may be sufficient to show the boundaries of such consecrated and unconsecrated portions respectively.

As to the provision of consecrated and unconsecrated portions of a burial ground, see 15 & 16 Vict. c. 85, s. 30, *ante*, p. 120; 16 & 17 Vict. c. 134, s. 7, *ante*, p. 153; and as to the provision of separate grounds, one to be consecrated and the other unconsecrated, see s. 10 of 18 & 19 Vict. c. 128, *ante*, p. 175.

Appeal.

XII. If upon the application in writing by any burial board to the bishop of the diocese for the consecration of a burial ground, declared in such writing to be in a fit and proper condition for the purpose of interment according to the rites of the *united* Church of England *and Ireland*, which application the board is required to make as soon as such ground is in such fit and proper condition, the said bishop shall refuse to consecrate the same, it shall be lawful for such burial board to appeal from such refusal to the archbishop of the province, who shall decide the matter in dispute; and if the said arch-

bishop shall decide that the said burial ground is not in a fit and proper condition as aforesaid, then the board shall be bound to put the said ground in a fit and proper condition; and if the said archbishop shall decide that the said burial ground is in a fit and proper condition as aforesaid, and ought to be consecrated, such decision shall be communicated in writing by the archbishop to the bishop aforesaid; and if after such communication the said bishop shall not within one calendar month consecrate the said burial ground, the said archbishop shall, under his hand and seal, license the same for the interment of bodies according to the rites of the *united* Church of England *and Ireland*, and the license of the said archbishop so granted as aforesaid shall, until such burial ground be consecrated, operate to make lawful the use of the same as if it had been consecrated. 20 & 21 Vict. c. 81.

The words in italics are repealed by the Statute Law Revision Act, 1892.

As the bishop has a discretion as to consecrating, and an appeal is given by this section from his refusal to consecrate to the archbishop, a *mandamus* would not lie to compel him to consecrate.

A *mandamus* has, however, been directed to a burial board requiring them to apply to the bishop for consecration.

If the archbishop grants a license it will be subject to a stamp duty of 2*l.* under the Stamp Act, 1891 (54 & 55 Vict. c. 39), Schedule I., set out *infra*, pp. 457, 458.

XIII. In any burial ground provided under the powers of the Acts hereinbefore recited or this Act, respecting which one of Her Majesty's principal secretaries of state shall have certified that the necessary provisions have been complied with, it shall be lawful for the incumbent or incumbents of such parish or parishes for which such burial ground is provided, or his or their curate or curates, or such duly qualified person Power to incumbent or curate to bury in burial ground certified by secretary of state prior to consecration.

20 & 21 Vict. c. 81.

as any such incumbent may authorise, if such incumbent, curate, or such duly qualified person respectively think fit, to bury in such burial ground prior to the decision of the bishop or archbishop upon the application for the consecration thereof.

Sect. 32 of 3 Geo. IV. c. 126, exempting funerals from tolls, extended to funerals in burial grounds provided for the parish, although not within its limits.

XIV. Whereas by section thirty-two of the Act of the third year of King George the Fourth, chapter one hundred and twenty-six, it is enacted, that no toll shall be demanded or taken by virtue of that or any other Act or Acts of Parliament on any turnpike road of or from any inhabitant of any parish, township, or place going to or returning from attending the funeral of any person who shall die and be buried in the parish, township, or place in which any turnpike road shall lie, from and after the first day of July one thousand eight hundred and fifty-eight, or from and after the termination of any now existing lease of tolls expiring before that date; the said enactment shall extend to exempt from toll every person going to or returning from attending the funeral of any person who shall be buried in any burial ground provided for the parish, township, or place in which he died under the Acts hereinbefore recited and this Act or any of them, or under any other Act of Parliament, although such burial ground be not within the limits of the parish, township, or place for which it may have been provided, or in which the turnpike road shall lie.

If any collector shall demand and take a toll from any person or persons who shall be exempt from the payment thereof, and who shall claim such exemption, every such toll-collector shall forfeit and pay any sum not exceeding 5*l.* for every such offence (4 Geo. IV. c. 95, s. 30); penalties are recoverable before any justice by warrant of distress, one moiety to be paid to informer and the other to the trustees of the road, and in default the offender may be committed for

any time not exceeding one calendar month (3 Geo. IV. c. 126, s. 141, as amended by the Summary Jurisdiction Acts). Appeal against conviction for any sum exceeding 40*s.*, on due notice being given, may be had to the next general or quarter sessions, whose decision shall be final (4 Geo. IV. c. 95, s. 87). 20 & 21 Vict. c. 81.

Clergymen going to or returning from parochial duty within their parishes are also exempt from toll, and this latter exemption extends to the cases of clergymen who live out of the parishes in which they do duty regularly, and whether the turnpike gate be in either parish (*Temple* v. *Dickinson*, [1858] 28 L. J. M. C. 10; 5 Jur. N. S. 363).

Persons wilfully destroying, &c., register book of burials guilty of felony.

XV. That every person who shall wilfully destroy or injure, or cause to be destroyed or injured, any register book of burials, kept according to the provisions of this Act, or any part or certified copy of any part of such register, or shall falsely make or counterfeit, or cause to be falsely made or counterfeited, any part of any such register or certified copy thereof, or shall wilfully insert or cause to be inserted in any registry book or certified copy thereof any false entry of any burial, or shall wilfully give any false certificate, or shall certify any writing to be a copy or extract of any such register book knowing the same to be false in any part thereof, or shall forge or counterfeit the seal of any burial board, shall be guilty of felony.

By the Forgery Act, 1861 (24 & 25 Vict. c. 98), s. 36, it is enacted, *inter alia*, that whosoever shall unlawfully destroy, deface, or injure, any register of burials required to be kept in England or Ireland, or forge or fraudulently alter any entry in any such register, or any certified copy thereof, or shall knowingly insert any false entry therein, or give a false certificate, or certify any copy knowing it to be false, or forge or counterfeit the seal of any burial board, or shall offer, utter, dispose of, or put off any such entry, copy, certificate, or seal, knowing the same to be false, forged, or altered, shall be guilty of felony and liable, at the discretion of the court, to penal servitude for life, or not less than three years, or to imprisonment, with or

20 & 21 Vict. c. 81.

without hard labour, or solitary confinement (not more than one month at any one time, or three months in any one year), not exceeding two years.

A register of burials must be kept in every burial ground provided under the Burial Acts, see 16 & 17 Vict. c. 134, s. 8, *ante*, p. 155.

Sect. 4 of 52 Geo. III. c. 146, not to apply to burials in grounds provided under the Burial Acts.

XVI. *Whereas by the Act of the fifty-second year of King George the Third, chapter one hundred and forty-six, section four, it is provided, that whenever the ceremony of burial shall be performed in any other place than the parish church or churchyard of any parish (or the chapel or chapel-yard of any chapelry providing its own distinct registers), and such ceremony shall be performed by any minister not being the rector, vicar, minister, or curate of such parish or chapelry, the minister who shall perform such ceremony of burial shall on the same or on the next day transmit to the rector, vicar, or other minister of such parish or chapelry or his curate, a certificate of such burial, and the rector, vicar, minister, or curate of such parish or chapelry shall thereupon enter such burial according to such certificate in the book kept pursuant to that Act for such purpose: And whereas distinct registers are by law required to be kept in the burial grounds provided under the Burial Acts:* The recited enactment of the said Act of King George the Third shall not apply in any case where the ceremony of burial is performed in a burial ground provided or to be provided under the Acts of Her Majesty hereinbefore recited and this Act, or any of them.

The words in italics were repealed by the Statute Law Revision Act, 1892. See note to last section.

Fees for service done in unconsecrated portion of burial ground to

XVII. No fees shall be charged or received by any burial board in respect of any service done or right granted in the unconsecrated portion of any burial ground provided by such board, but such as are identical in amount with the fees charged and received in respect

of the same service or right in the consecrated portion of such ground, less any such portion of such corresponding fees or payments which may be received for or on account of any incumbent, churchwarden, clerk, or sexton, or of any trustee for or on behalf of any incumbent, churchwarden, clerk, or sexton. 20 & 21 Vict. c. 81. be identical as for consecrated portion.

As to the fees in the City of London Cemetery at Little Ilford, see s. 6 of 20 & 21 Vict. c. 35, *ante*, p. 197. For provision as to the fees to the incumbent, clerk, or sexton, see s. 32 of 15 & 16 Vict. c. 85, *ante*, p. 122; as to the fees payable to the burial board for the exclusive rights of burial, for constructing vaults, for erecting monuments and gravestones, see s. 33, *ante*, p. 125; as to the fees payable to the burial board for interments, &c., s. 34, *ante*, p. 127; as to the fees payable to churchwardens or trustees for parochial purposes, &c., see s. 36, *ante*, p. 128.

As to the power of the secretary of state to approve the scale of fees and alterations thereof, see s. 7 of 18 & 19 Vict. c. 128, s. 7, *ante*, p. 173; as to the power of the vestry, with the consent of the bishop, to revise the fees payable to the incumbent, clerk, and sexton, see s. 37 of 15 & 16 Vict. c 85, *ante*, p. 129.

XVIII. *So much of section twenty of the firstly hereinbefore recited Act as requires "that there shall be paid in every year, in addition to the interest of the money borrowed and unpaid, not less than one-twentieth of the principal sum borrowed, until the whole is discharged," shall be repealed, and the provisions of the other Acts hereinbefore recited to which the said section has been extended shall be construed accordingly.* So much of s. 20 of 15 & 16 Vict. c. 85, as to payment of money borrowed, repealed.

Repealed by the Statute Law Revision Act, 1892.

XIX. The clauses of the Commissioners Clauses Act, 1847, with respect to mortgages to be executed by the Commissioners, shall be incorporated with this Act, and shall apply to mortgages and other securities to be executed by burial boards; and for the purposes of this Clauses of 10 & 11 Vict. c. 16, with respect to mortgages incorporated.

20 & 21 Vict. c. 81. Act the expression "the Commissioners" where used in the said clauses shall mean the burial board acting in the execution of the said clauses and the Acts hereinbefore recited or this Act.

The powers conferred by the Commissioners Clauses Act (10 Vict. c. 16) may be extended to such commissioners as are constituted by any "special Act," with which any of its clauses may be incorporated, to be construed as if such clauses were set forth therein with reference to the matter to which such Act relates (ss. 1, 5). With respect to mortgages on security of rates, they shall be by deed duly stamped, and be under seal of the commissioners (*i.e.*, Burial Board, *vide supra*) (s. 75). A register, in which entries shall be made within fourteen days of date, shall be kept by the clerk, and be open to inspection without fee (s. 76); mortgages may be transferred (s. 77); transfers are to be registered within thirty days on payment of fee of five shillings; except the person to whom a mortgage is last transferred, no person shall have power to discharge same (s. 78); interest is to be paid half-yearly unless otherwise provided (s. 79); money may be borrowed at a lower rate of interest to pay off mortgages at higher rate (s. 80); a time of repayment (at the office of the commissioners) may be inserted in the deed (s. 81); if no time is fixed, payment may be demanded after expiration of twelve months on giving six months' notice; in like manner, commissioners may pay off mortgage on giving like notice (s. 82); interest is to cease after expiration of notice unless default be made by the commissioners (s. 83), who shall set apart annually out of the rates the prescribed part as a sinking fund to be invested in Government securities until sufficient to pay off the mortgage (s. 84); if more than one mortgage, commissioners shall decide by lot the order in which such shall be paid off after six months' notice, signed by their clerk, to the mortgagee (s. 85); the books of commissioners shall be open at all seasonable times to inspection of mortgagees, with liberty to take extracts (s. 88). For these clauses at length, see *infra*.

It will be seen that the material effect of this incorporating section is that mortgages and transfers are in future to be regis-

tered, and that the registered owner alone will be able to discharge the mortgage. All mortgages already granted should be entered so as to make the register as complete as possible. 20 & 21 Vict. c. 81.

As to the powers of the parish council to borrow, reference must be made to s. 12 of the Local Government Act, 1894 (set out *infra*), which incorporates ss. 233, 234, and 236–239 of the Public Health Act, 1875. See also Form 8, *post*.

Sinking fund to be provided for paying off mortgages.

XX. Provided always, that for the purpose of providing a sinking fund for paying off the principal money borrowed on mortgages granted under any of the said Acts or this Act, the burial board shall once in every year set aside, out of the monies charged by such mortgages, such sum as they think proper, being a sum equal to or exceeding one-fiftieth part of the principal money so borrowed.

See note to s. 19.

Power to burial boards to borrow money on terminable annuities.

XXI. Any burial board or council of a borough may, for the purpose of raising money, instead of making mortgages under any of the said Acts, grant terminable annuities for a life or lives, or for any number of years not exceeding thirty years, to be paid out of the like monies as provided with regard to the monies secured by such mortgages.

See *post*, Form 9, and note to s. 19, *supra*.

Power to councils of boroughs to make a separate rate for burial and expenses.

XXII. Any money required by the council of any borough for the purpose of defraying the expense of executing the Acts hereinbefore recited, or any of them, or this Act, or for paying any monies borrowed under such Act, or any interest thereon, may be raised by such council, if they think fit, by means of a separate rate, to be called a burial rate, to be charged upon all property within such borough liable to be charged to the borough rate; and the council of such borough shall have all such powers for making and levying such rate, and all

20 & 21 Vict. c. 81.

provisions shall be applicable in respect thereof, as in the case of a borough rate made under the *Act passed in the session holden in the fifth and sixth years of King William the Fourth, chapter seventy-six.*

For the words in italics, reference must be made to the Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), s. 242, sub-s. 1. As to the power to rate, see ss. 144–149 of that Act.

Orders in council may be issued, on representation of secretary of state, so as to prevent vaults, &c., being dangerous to health.

XXIII. It shall be lawful for Her Majesty, upon the representation of one of Her Majesty's principal secretaries of state, by and with the advice of her privy council, from time to time to order such acts to be done by or under the directions of the churchwardens or such other persons as may have the care of any vaults or places of burial, for preventing them from becoming or continuing dangerous or injurious to the public health; and every such order in council shall be published in the *London Gazette*, and such churchwardens or other persons shall do or cause to be done all acts ordered as aforesaid, and the expenses incurred in and about the doing thereof shall be paid out of the poor rates of the parish: Provided always, that no such representation shall be made until ten days previous notice of the intention to make such representation shall have been given to the churchwardens or other persons, or one of the churchwardens or other persons, having the care of the vaults or places of burial to which the representation relates.

This section is extended by 22 Vict. c. 1, *infra*, p. 227. It would seem that an order of Her Majesty in council under this section would justify all acts done under it, including the removal of bodies interred, without a faculty or any other authority. This is, however, contrary to the opinion and judgment of Dr. Tristram, Q.C., Chancellor of the Diocese of London, in two cases heard before him in the Consistory Court of London: *The Rector and Churchwardens of St. Mary-*

at-Hill with St. Andrew Hubbard v. *The Parishioners of the Same*, [1892] P. 394, and *The Rector and Churchwardens of St. Michael Bassishaw* v. *The Parishioners of the Same*, [1893] P. 233. In the latter case Dr. Tristram said: "The Court is of opinion that the order in council cannot lawfully be carried out without the authority of a faculty, inasmuch as it involves interference with the fabric and fittings of the church, interference with family vaults secured to families by decrees of the Court, and the disturbance and removal of remains deposited in consecrated ground." 20 & 21 Vict. c. 81.

This section does not apply to grounds which had ceased to be used for burial prior to the passing of the Act (*Foster* v. *Dodd*, [1867] L. R. 1 Q. B. 475; 14 L. T. N. S. 327); the authority can only be exercised when an existing burial ground is under the care of churchwardens or other persons who have charge of it for the purposes of burial (*S. C.* on appeal, [1868] L. R. 3 Q. B. 67; 8 B. & S. 842; 37 L. J. Q. B. 28; 17 L. T. 614). Orders in council relating to closed burial grounds do not apply to private grounds (*Jacobson* v. *St. Pancras*, [1880] 44 J. P. 184, M. R.) But the wilful disturbance of remains in a disused Nonconformists' burial ground is a misdemeanour (*R.* v. *Jacobson*, [1880] 14 Cox C. C. 522).

Trustees of closed cemeteries empowered, with sanction of secretary of state, to let, lease, or sell portions thereof which have not received interments.

XXIV. In all cases in which unconsecrated land or buildings is or are vested in a trustee or trustees, either under any local Act or otherwise, for the purposes of a cemetery or burial ground, and burials in such cemetery or burial ground shall by order in council under the hereinbefore recited Acts or any of them have been ordered to be wholly or partially discontinued, it shall be lawful for the trustee or trustees for the time being of such cemetery or burial ground, from time to time, with the sanction of one of Her Majesty's principal secretaries of state, to let, demise, or lease any part or parts, in which no interment shall have taken place, of such land or buildings, and to renew or accept surrenders of any leases or tenancies thereof, and to sell and absolutely dispose thereof for money in gross, or for any perpetual

20 & 21 Vict. c. 81.

or other rent or rents to be made payable thereout, and by public auction or private contract, and to sell all or any such perpetual or other rent or rents for money in gross and in manner aforesaid, and for any of the purposes aforesaid to make and execute any contracts, conveyances, leases, or other assurances, and to take any measures and make any arrangements which may be deemed expedient; and upon any such lease or sale as aforesaid a grant or conveyance by such trustee or trustees alone shall be a sufficient assurance of the property thereby purported to be leased or sold, and the receipts of such trustee or trustees shall be effectual discharges for the monies therein expressed to have been received, and shall absolve any lessee or purchaser from having to see to or being answerable for the application of such monies; and the net monies to be received by such trustee or trustees under any of the preceding powers shall be applied by them in discharge of any incumbrances affecting such cemetery or burial ground, and any debts which such trustee or trustees may have properly incurred in their fiduciary capacity; and any residue of such money shall, where such land or buildings shall have been held in trust for any parish, be applied in such manner, for the benefit of such parish, as the vestry of such parish shall direct; but where such land or buildings shall have been held in trust for the benefit of private persons, such residue shall be divided by such trustee or trustees rateably among the cestuis que trusts; and it shall be lawful for such trustee or trustees so to apply any reserved fund in his or their hands.

The owner of any churchyard, cemetery, or burial ground closed for burials may convey the soil of the same to the local authority for an open space (see 44 & 45 Vict. c. 34, s. 4, and 50 & 51 Vict, c. 32, s. 5, set out *infra*).

XXV. Except in the cases where a body is removed from one consecrated place of burial to another by faculty granted by the ordinary for that purpose, it shall not be lawful to remove any body, or the remains of any body, which may have been interred in any place of burial, without license under the hand of one of Her Majesty's principal secretaries of state, and with such precautions as such secretary of state may prescribe as the condition of such license; and any person who shall remove any such body or remains, contrary to this enactment, or who shall neglect to observe the precautions prescribed as the condition of the license for removal, shall, on summary conviction before any two justices of the peace, forfeit and pay for every such offence a sum not exceeding ten pounds.

20 & 21 Vict. c. 81.

Bodies not to be removed from burial grounds, save under faculty, without license of secretary of state.

See s. 23, *ante*, p. 220, and 22 Vict. c. 1, s. 1, and note thereon, *infra*, p. 227.

Besides the statutory penalty for illegal disinterment here prescribed, such an offence is punishable as a misdemeanour at common law (*R.* v. *Sharpe*, [1857] 1 D. & B. 160), and if committed in consecrated ground, punishable by ecclesiastical law (*Adlam* v. *Coulthurst*, [1867] L. R. 2 A. & E. 30). If a license under this section be obtained by fraud, the disinterment will be as illegal as if unauthorised (*Williams* v. *Williams*, [1882] 20 Ch. D. 659). In the last cited case a testator directed Miss W. to burn his body, and his executors to repay her the expense of so doing. The body was buried in unconsecrated ground, and Miss W. obtained the license of the secretary of state for its disinterment by a representation that it was intended to remove the body to consecrated ground. In a subsequent action for the expenses, it was held that the claim could not be maintained on the ground, among others, that the assent of the Home Secretary had been obtained by fraud, and the disinterment was therefore illegal.

The Chancellor of London decided in *In re Dixon*, [1892] P. 386, that the Court would not be justified in granting a faculty for enabling remains to be removed after burial for

20 & 21 Vict. c. 81.

cremation, but that there is no objection to the burial in consecrated ground, with the use of the Burial Service, of the ashes resulting from cremating remains.

See Introduction, *ante*, p. 41, as to disinterment generally.

Burial boards may in certain cases purchase cemeteries which have been closed.

XXVI. Where any cemetery in which burials have, by order in council, under the hereinbefore recited Acts or any of them, been ordered to be discontinued, is adjoining or near to any land appropriated or about to be appropriated by any burial board for the purposes of a burial ground, and appears to such board eligible for the purpose of appropriating or erecting buildings for or making approaches to such burial ground, it shall be lawful for such board, with the approval of the vestry or respective vestries, to purchase such cemetery; and where in the like case any cemetery has been so purchased before the passing of this Act, the purchase thereof shall be deemed to have been lawful: Provided always, that, notwithstanding such purchase, such order in council shall remain in full force and effect in relation to such cemetery.

Orders in council to remain in force.

By s. 26 of 15 & 16 Vict. c. 85, *ante*, p. 117, the burial board is empowered to purchase cemeteries which have not been closed.

Where a burial ground vested in the rector of the parish had been closed by order in council, and twelve years subsequently part thereof was taken by a corporation, the purchase money being paid into court, it was held that the rector was entitled to the dividends (*Ex parte Rector of Liverpool*, L. R. 11 Eq. 15; 40 L. J. Ch. 65; 23 L. T. N. S. 354). Also so held where part of a burial ground, taken in like manner by a railway company, had been vested in the rector and churchwardens for the benefit of the parish, the same not having been closed but used as a burial ground up to the time of the purchase (*Ex parte Rector of St. Martin's, Birmingham*, L. R. 11 Eq. 23; 40 L. J. Ch. 69; 23 L. T. N. S. 575); but where, under a special statute, part of a consecrated burial ground, which had been closed by order in council, was subsequently

taken under the Lands Clauses Act for a public improvement and converted into building land, it was held that the owner of the freehold was not entitled to the improved value thereby occasioned, but the value should be estimated as it was prior to the passing of the Act (*Stebbing* v. *Metropolitan Board*, [1870] L. R. 6 Q. B. 37; 23 L. T. N. S. 530; 40 L. J. Q. B. 1; 19 W. R. 73). 20 & 21 Vict. c. 81.

XXVII. No resolution or proceeding of any vestry, or meeting in the nature of a vestry, for the purposes of the said recited Acts and this Act, or any of them, shall be void or voidable by reason of any defect or irregularity of or in notice of such vestry or meeting, or any other error in form in the calling of such vestry or meeting, or in the proceedings thereat, unless notice in writing of such defect or irregularity or error shall have been given at such vestry or meeting, or within seven days after the day of the holding thereof, to the churchwardens or other persons to whom it belongs to call meetings of such vestry, or such meeting in the nature of a vestry, who shall thereupon call another meeting for the purpose of considering the previous resolution or proceeding or the matter thereof; and no such resolution and proceeding made or taken at any such vestry, or meeting in the nature of a vestry, before the passing of this Act, which shall not have been objected to by notice in writing to such churchwardens or persons as aforesaid, shall be deemed invalid by reason of any such defect, irregularity, or error. Resolutions, &c. of vestries not to be void by reason of irregularity of notices, &c.

See s. 10 of 15 & 16 Vict. c. 85, *ante*, p. 101, and notes thereto.

XXVIII. In the construction of this Act the expression "burial board" shall mean a burial board constituted under the hereinbefore recited Acts or any of them, or under this Act. "Burial board."

20 & 21 Vict. c. 81.

Construction of certain expressions used in 17 & 18 Vict. c. 87.

XXIX. *That the expression "borough" whenever used in the said Act of the seventeenth and eighteenth years of her said Majesty shall be construed to include any city, borough, port, cinque port, or town corporate named in the schedules annexed to an Act passed in the sixth year of the reign of King William the Fourth, intituled "An Act to provide for the Regulation of Municipal Corporations in England and Wales," and to any city, borough, port, cinque port, or town corporate incorporated by charter granted or to be granted in pursuance of that or any subsequent Act; and the words "town council of any borough," or "council of any borough," wherever used in the said Act of the seventeenth and eighteenth years of her said Majesty, shall (as well with respect to all past as to future proceedings under the same Act, and for the purpose of confirming and making valid all such past proceedings), be construed to mean town council or council of any city, borough, port, cinque port, or town corporate.*

By s. 242 of the Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), where any Act refers to the Municipal Corporations Act, 1835, the reference is to be deemed to be to the Municipal Corporations Act, 1882. Section 29 was ultimately repealed by the Statute Law Revision Act, 1892.

Recited Acts and this to be as one.

XXX. The hereinbefore recited Acts and this Act shall be construed together as one Act.

The Burial Acts passed from 1852 to 1885, inclusive, are to be read together as one Act, and each may be referred to as the Burial Act of the year in which it was passed. See the Short Titles Act, 1896 (59 & 60 Vict. c. 14).

22 VICT. C. 1.

22 Vict. c. 1.

An Act more effectually to prevent Danger to the Public Health from Places of Burial.

[25th March, 1859.]

WHEREAS by section twenty-three of an Act passed in the session holden in the twentieth and twenty-first years of Her Majesty, chapter eighty-one, "to amend the Burial Acts," it was enacted that it should be lawful for Her Majesty, upon the representation of one of Her Majesty's principal secretaries of state, by and with the advice of her privy council, from time to time to order such acts to be done by or under the directions of the churchwardens or such other persons as might have the care of any vaults or places of burial, for preventing them from becoming or continuing dangerous or injurious to the public health; and such churchwardens or other persons should do or cause to be done all acts ordered as aforesaid, and the expenses incurred in and about the doing thereof should be paid out of the poor rates of the parish: and whereas it is expedient to amend the said enactment as hereinafter mentioned: be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

20 & 21 Vict. c. 81.

The preamble was repealed by the Statute Law Revision Act, 1892.

I. Where it appears to one of Her Majesty's principal secretaries of state, on the representation of any person authorised by him to inspect any vault or place of burial in relation to which an order in council has been

Where persons having the care of a place of burial neglect to comply

22 Vict. c. 1.

with order in council, the churchwardens may act in their stead.

or shall have been issued under the said recited enactment, that any acts which by such order in council are ordered to be done by or under the direction of persons other than churchwardens having the care of such vaults or place of burial are not done or performed within a reasonable time, and according to the intent of such order in council, it shall be lawful for such secretary of state, by writing under his hand, to authorise and direct the churchwardens of the parish in which such vaults or place of burial may be situate forthwith to do or complete the acts in such order in council mentioned, or such of them as remain undone, and such order of the secretary of state shall be obeyed by such churchwardens, and they and all persons acting under their direction shall have the same power of entering and doing all such acts upon the premises to which the order in council relates as if the said acts had by the order in council been directed to be done by such churchwardens, and such vaults or place of burial had been under their care; and any person who shall obstruct such churchwardens or any others acting under their direction in relation to the premises, or remove or interfere with the works done by such churchwardens, shall be guilty of a misdemeanor.

An order of Her Majesty in council, by virtue of this section, will, it is presumed, justify all acts done under it, including the removal of bodies interred, without a faculty or any other authority. See note *ante*, p. 220.

Apparently the transfer of the duties of the churchwardens to the parish council by s. 6, sub-s. 1 (*b*) of the Local Government Act, 1894, *post*, p. 324, will not include the obligation to have orders issued against them under this section in respect of the churchyard round a church, since that Act excepts the transfers of powers, duties, and liabilities relating to the church. If this section applies to private burial grounds, then it would seem that the duties of churchwardens in respect thereof are transferred to the parish councils. Where there is a parish

meeting, but no council exists, the provisions of this section appear to be unaffected. 22 Vict. c. 1.

The orders given to other persons than the churchwardens are those given under s. 23 of 20 & 21 Vict. c. 81, *ante*, p. 220.

II. This Act shall be read together with the said Act of the twentieth and twenty-first years of Her Majesty and the Burial Acts therein mentioned as one Act. This and recited Act to be as one.

See note to s. 30 of 20 & 21 Vict. c. 81, *ante*, p. 226.

23 & 24 VICT. C. 64.

23 & 24 Vict. c. 64.

An Act to make further provision for the Expenses of Local Boards of Health and Improvement Commissioners acting as Burial Boards.

[6th August, 1860.]

WHEREAS by an Act passed in the session holden in the twentieth and twenty-first years of Her Majesty (chapter eighty-one), "to amend the Burial Acts," it is provided that upon the petition of the local board of health of any district established under the Public Health Act, or upon the petition of any commissioners elected by the ratepayers and acting under or by virtue of any local Act of Parliament for the improvement of any town, parish, or borough, stating that the district of such local board of health or of such commissioners is co-extensive with a district for which it is proposed to provide a burial ground, and that no burial board has been appointed for such district, and that an order in council has been made for closing all or any of the burial grounds within the said district, it should be lawful for Her Majesty, with the advice of her privy 20 & 21 Vict. c. 81.

23 & 24 Vict. c. 64.

council, in case Her Majesty see fit so to do, to order that such local board should be a burial board for the district of such local board, or that such commissioners should be a burial board for the district of such commissioners, and that thereupon such local board or such commissioners, as the case might be, should be a burial board for such district accordingly: and whereas under "The Local Government Act, 1858," a local board may, at the option of the vestry, be the burial board in certain cases: and whereas it is expedient that such local boards and commissioners respectively, when constituted burial boards, should be authorised to provide for their expenses as hereinafter mentioned: be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in the present Parliament assembled, and by the authority of the same, as follows:

21 & 22 Vict. c. 98, s. 49.

The section of 20 & 21 Vict. c. 81 here referred to is s. 4. For details as to local boards of health acting as burial boards see the notes to that section *ante*, p. 202.

The preamble was repealed by the Statute Law Revision Act, 1892.

When a vestry of any parish comprised in a local government district resolves to appoint a burial board, the local board may at the option of the vestry be the burial board for such parish; and all expenses incurred by such burial board shall be defrayed out of a rate to be levied on such parish, in the same manner as a general district rate: Provided that if such parish has been declared a ward for the election of members of the local board, such members shall form the burial board for the parish, and shall be deemed to be a board elected under the Burial Acts for the time being in force (38 & 39 Vict. c. 55, Sched. 5, partially re-enacting 21 & 22 Vict. c. 98, s. 49).

The Public Health Act, 1875 (38 & 39 Vict. c. 55, Sched. 5), re-enacting and amending 29 & 30 Vict. c. 90, s. 44, also provides that when the district of a burial board is included in or conterminous with the district of an urban authority, the

burial board may, by resolution of the vestry and by agreement of the burial board and urban authority, transfer to the urban authority all their estate, property, rights, powers, duties, and liabilities, and from and after such transfer the urban authority shall have all such estate, property, rights, powers, duties, and liabilities as if they had been duly appointed a burial board under the Burial Acts for the time being in force. 23 & 24 Vict. c. 64.

Expenses of local board constituted a burial board may be paid out of general district rate, or by a separate rate.

I. Any money required by any local board constituted a burial board for defraying the expense of carrying into execution the powers and provisions of the Burial Acts and of this Act in the district for which they may have been so constituted a burial board, or for paying any monies borrowed or annuities granted under the authority of the said Acts, or any interest on monies borrowed, or for providing a sinking fund for the repayment of such monies, may, if the local board so think fit, be paid out of the general district rates leviable within such district; and such local board may levy as part of the general district rate, or by a separate rate, under the name and designation of a burial rate to be assessed and recovered in like manner as a general district rate within the district for which they act as a burial board, such sums of money as shall be from time to time necessary for the purposes aforesaid, or any of them.

The mode of payment allowed by this section is optional. If it is not adopted, the expenses will be paid out of the poor rate.

Any urban authority, constituted a burial board, may from time to time repair and uphold the fences surrounding any burial ground which has been discontinued as such within their jurisdiction, or take down such fences and substitute others in lieu thereof, and shall from time to time take the necessary steps for preventing the desecration of such burial ground, and placing it in a proper sanitary condition; and they may from time to time pass by-laws, subject to the provisions of this Act, for the preservation and regulation of

23 & 24 Vict. c. 64.

all burial grounds within their jurisdiction, and the expense of carrying this section into execution may be defrayed out of any rates authorised to be levied by any urban authority constituted a burial board (38 & 39 Vict. c. 35, Sched. 5, re-enacting 24 & 25 Vict. c. 61, s. 21).

The mode of levying district rates is prescribed by the Public Health Act, 1875, s. 207, and following sections.

Expenses of improvement commissioners, when acting as a burial board, may be paid out of improvement rate, or by a separate rate.

II. Any money required by any such commissioners as aforesaid who shall have been constituted a burial board for defraying the expense of carrying into execution the powers and provisions of the Burial Acts in the districts for which they may have been so constituted a burial board, or for paying any monies borrowed, or annuities granted under the authority of the said Acts, or any interest on monies borrowed, or for providing a sinking fund for the repayment of such monies, may, if the commissioners so think fit, be paid out of the improvement rate leviable within such district, and the commissioners as such burial board may levy as part of the improvement rate, or by a separate rate under the name and designation of a burial rate, to be assessed and recovered in like manner as an improvement rate, such sums of money as shall be from time to time necessary for the purposes aforesaid, or any of them.

By s. 1 of 25 & 26 Vict. c. 100, *post*, p. 235, the commissioners may, with consent of the Treasury, mortgage the improvement rate and burial rate, or either of them.

Separate accounts to be kept.

III. The local board and the commissioners respectively who may have been constituted a burial board shall keep distinct accounts of their receipts and expenditure in the exercise of their functions as such burial board; and where their expenses are defrayed by monies raised under the provisions of this Act, such accounts shall be audited in the same manner as other accounts of the receipts and expenditure of such local board and

commissioners respectively, and any surplus of the monies raised by any rate made under this Act, and of the income of any burial ground provided by means of monies raised or paid under the provisions of this Act, which may remain after payment of the expenses and monies which should be defrayed or paid under the Burial Acts, shall be applied in aid of the general district rate or improvement rate, as the case may be, levied within the district, which shall have been or might have been charged with a separate rate under this Act. 23 & 24 Vict. c. 64.

In the *Paddington Burial Board* v. *Commissioners of Inland Revenue*, [1884] 13 Q. B. D. 9, it was held that the surplus to be applied in aid of the poor rate by s. 22 of 15 & 16 Vict. c. 85, *ante*, p. 113, was chargeable with income tax, and apparently the surplus here mentioned will also be so charged.

As to appointment of burial boards without consent of secretary of state.

IV. Where any parish or place has been divided into two or more parts or districts for all or any ecclesiastical purposes, and any one of such parts has a separate burial ground, it shall not be lawful for the vestry or meeting in the nature of a vestry for such entire parish or place to appoint a burial board without the approval of one of Her Majesty's principal secretaries of state.

The enactments affected by this section are 18 & 19 Vict. c. 28, s. 12, *ante*, p. 178, and 20 & 21 Vict. c. 81, s. 5, *ante*, p. 203. Its effect is that the consent of the secretary of state is necessary for appointing a burial board for an area containing within it an existing burial ground, whether it be a churchyard or provided under the Burial Acts. The converse, however, is not provided for. If the board have been established for the whole area, no consent is necessary for the appointment of a burial board under s. 12 of 18 & 19 Vict., and s. 25 of 20 & 21 Vict. c. 1. For a collection of the provisions and cases on the question of the areas of burial boards, see *ante*, pp. 102, 177, and 205.

Such approval must be previously given, see 34 & 35 Vict. c. 33, s. 1, *post*, p. 236.

23 & 24 Vict. c. 64. By s. 7, sub-s. 1, the parish meeting in a rural parish has exclusively the right to adopt the Burial Acts for the whole parish. This section will, it is apprehended, apply to a resolution of the parish meeting where a part of the parish already possesses a burial ground, and the consent of the secretary of state will still be a condition precedent to the adoption of the Burial Acts in such a case.

25 & 26 Vict. c. 100.

25 & 26 VICT. C. 100.

An Act to authorise Improvement Commissioners acting as Burial Boards to mortgage certain Rates for the Purposes of the Burial Acts. [7th August, 1862.]

23 & 24 Vict. c. 64. WHEREAS by an Act passed in the session holden in the twenty-third and twenty-fourth years of the reign of Her Majesty (chapter sixty-four), to make further provision for the expenses of local boards of health and improvement commissioners acting as burial boards, it was enacted, that any money required by any commissioners elected by the ratepayers, and acting under or by virtue of the powers of any local Act of Parliament for the improvement of any town, parish, or borough, who should have been constituted a burial board for defraying the expense of carrying into execution the powers and provisions of the Burial Acts in the district for which they may have been so constituted a burial board, or for paying any monies borrowed or annuities granted under the authority of the said Acts, or any interest on monies borrowed, or for providing a sinking fund for the repayment of such monies, might, if the

commissioners thought fit, be paid out of the improvement rate leviable within such district; and the commissioners, as such burial board, might levy as part of the improvement rate, or by a separate rate under the name and designation of a burial rate, to be assessed and recovered in like manner as an improvement rate, such sums of money as should be from time to time necessary for the purposes aforesaid or any of them: and whereas doubts have arisen whether under such provisions the improvement rate or burial rate can be legally mortgaged or assigned as a security for the payment of the sums referred to in the said Act, and it is expedient that the commissioners acting as such burial board should have the power of mortgaging the said rates: be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows: 25 & 26 Vict. c. 100.

Commissioners, with consent of treasury, may mortgage improvement rate and burial rate, or either.

I. Any commissioners elected by the ratepayers, and acting under or by virtue of the powers of any local Act of Parliament for the improvement of any town, parish, or borough, who shall have been constituted a burial board for any district, may, with the approval of the commissioners of Her Majesty's treasury, from time to time borrow at interest on mortgage of the improvement rate and burial rate, or either of them, leviable within the district, such sums of money as may be required by the burial board for the purposes of the Burial Act within the district.

The power to constitute such commissioners a burial board is given by 20 & 21 Vict. c. 81, s. 4, *ante*, p. 201. Provisions as to the payment of their expenses are contained in 23 & 24 Vict. c. 64, *ante*, p. 229.

25 & 26 Vict. c. 100. Certain provisions of 10 & 11 Vict. c. 16, to apply to this Act.

II. The clauses and provisions of "The Commissioners Clauses Act, 1847," with respect to the mortgages to be executed by the commissioners, shall be incorporated with this Act, and shall be applicable to all mortgages created under the provisions thereof.

See these clauses, *post.*

34 & 35 Vict. c. 33.

34 & 35 VICT. C. 33.

An Act to explain and amend the Burial Acts.

[29th June, 1871.]

20 & 21 Vict. c. 81. 23 & 24 Vict. c. 64.

WHEREAS under the Burial Acts it is not lawful for a vestry or meeting in the nature of a vestry in certain cases to appoint a burial board without the approval of one of Her Majesty's principal secretaries of state, and doubts have arisen whether such approval is to be given before or after the appointment of a board, and it is expedient to remove such doubts:

Be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

The preamble was repealed by the Statute Law Revision (No. 2) Act, 1893.

Approval of secretary of state to appointment of burial board.

I. Where the approval of one of Her Majesty's principal secretaries of state to the appointment of a burial board by a vestry or meeting in the nature of a vestry is required under the Burial Acts, such vestry or meeting in the nature of a vestry shall not *after the passing of this Act* appoint such board until a resolution

of such vestry or meeting declaring the expediency of such appointment has been passed, and notice thereof sent to one of Her Majesty's principal secretaries of state, and the same has been approved of by the secretary of state, and approval of such resolution shall be deemed to be approval of the appointment of the board. 34 & 35 Vict. c. 33.

The secretary of state before giving such approval may require notice of such resolution, in such form and containing such particulars as he may direct, to be published in such manner as he may think sufficient for giving notice thereof to all persons interested.

Provided that where the approval of one of Her Majesty's principal secretaries of state has been given before the passing of this Act to the appointment of any burial board, that approval shall be valid whether it has been given before or after the date of such appointment.

The first words in italics were repealed by the Statute Law Revision Act, 1893.

The last paragraph was repealed by the Statute Law Revision Act, 1883.

II. This Act shall be construed as one with *the Acts mentioned in the schedule to this Act, and those Acts and this Act may be cited together as* the Burial Acts, 1852 to 1871, and each of them may be cited as the Burial Act of the year in which it was passed. Act to be construed with Acts in schedule. Short title.

The words in italics in s. 2 and the schedule were repealed by the Statute Law Revision Act, 1893.

The Acts set out in the schedule, together with the City of London Burial Act, 1857 (20 & 21 Vict. c. 35), the Burial Act, 1871 (34 & 35 Vict. c. 33), the Burial Laws Amendment Act, 1880 (43 & 44 Vict. c. 41), the Burial and Registration Acts (Doubts Removal) Act, 1881 (44 & 45 Vict. c. 2), and the Burial Boards (Contested Elections) Act, 1885 (48 & 49 Vict. c. 21), are to be read together as one Act, and are to be referred to as the Burial Acts, 1852 to 1885.

34 & 35 Vict. c. 33.

SCHEDULE.

THE BURIAL ACTS, 1852 TO 1871.

SESSION AND CHAPTER.	TITLE OF ACT.
15 & 16 Vict. c. 85.	An Act to amend the laws concerning the Burial of the Dead in the Metropolis.
16 & 17 Vict. c. 134.	An Act to amend the laws concerning the Burial of the Dead in England, beyond the limits of the Metropolis, and to amend the Act concerning the Burial of the Dead in the Metropolis.
17 & 18 Vict. c. 87.	An Act to make further provision for the Burial of the Dead in England beyond the limits of the Metropolis.
18 & 19 Vict. c. 128.	An Act further to amend the laws concerning the Burial of the Dead in England.
20 & 21 Vict. c. 81.	An Act to amend the Burial Acts.
22 Vict. c. 1.	An Act more effectually to prevent danger to the Public Health from Places of Burial.
23 & 24 Vict. c. 64.	An Act to make further provision for the expenses of Local Boards of Health and Improvement Commissioners acting as Burial Boards.
25 & 26 Vict. c. 100.	An Act to authorise Improvement Commissioners acting as Burial Boards to mortgage certain rates for the purposes of the Burial Acts.

43 & 44 VICT. C. 41.

43 & 44 Vict. c. 41.

An Act to amend the Burial Laws.

[7th September, 1880.]

WHEREAS it is expedient to amend the law of burial in England and the Channel Islands:

Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

After passing of Act, notice may be given that burial will take place in churchyard or graveyard without the rites of the Church of England.

I. After the passing of this Act any relative, friend, or legal representative having the charge of or being responsible for the burial of a deceased person may give forty-eight hours' notice in writing, indorsed on the outside "Notice of Burial," to, or leave or cause the same to be left at the usual place of abode of the rector, vicar, or other incumbent, or in his absence the officiating minister in charge of any parish or ecclesiastical district or place, or any person appointed by him to receive such notice, that it is intended that such deceased person shall be buried within the churchyard or graveyard of such parish or ecclesiastical district or place without the performance, in the manner prescribed by law, of the service for the burial of the dead according to the rites of the Church of England, and after receiving such notice no rector, vicar, incumbent, or officiating minister shall be liable to any censure or penalty, ecclesiastical or civil, for permitting any such burial as aforesaid. Such notice shall be in writing, plainly signed

43 & 44 Vict. c. 41.

with the name and stating the address of the person giving it, and shall be in the form or to the effect of Schedule (A) annexed to this Act.

The word "graveyard" in this Act shall include any burial ground or cemetery vested in any burial board, or provided under any Act relating to the burial of the dead, in which the parishioners or inhabitants of any parish or ecclesiastical district have rights of burial; and in the case of any such burial ground or cemetery, if a chaplain is appointed to perform the burial service of the Church of England therein, notice under this Act shall be addressed to such chaplain, but the same shall be given to or left at the office of the clerk of the burial board, if any, in whom any such burial ground or cemetery may be vested: Provided also, that it shall be lawful for the proprietors or directors of any proprietary cemetery or burial ground to make such by-laws or regulations as may be necessary for enabling any burial to take place therein in accordance with the provisions of this Act, any enactment to the contrary notwithstanding.

In *Wood* v. *Burial Board of Headingley-cum-Burley*, ([1892] 1 Q. B. 713) it was held that the burial board are under no legal obligation to cause the notice required by this section to be given to an incumbent before permitting a burial to take place in the consecrated portion of the burial ground without the performance of the burial service according to the rites of the Church. In the same case it was held that, apart from this Act, a person commits an ecclesiastical offence if, not being in orders, or not being authorised in that behalf by the incumbent of the parish, he conducts a religious service at a burial in the consecrated portion of a cemetery which is the burial ground of such parish. It is, therefore, an illegal act on the part of the burial board knowingly to permit such unqualified or unauthorised person so to act.

As to who is included among relatives, &c. responsible for

the burial of a deceased person, see Introduction, *ante*, p. 36. See as to by-laws in cemeteries, *Slattery* v. *Naylor*, [1888] 13 A.C. 446. 43 & 44 Vict. c. 41.

The notice to be given must, if it is to be effective, comply strictly with the requirements of the Act. In *Hoare* v. *Ram*, [1881] 45 J. P. 729, the notice contained the name but not the address of the person giving it. The vicar at first objected to bury the body because the churchyard was full, but afterwards room was found. The giver of the notice attended with his friends and the corpse on the day named in the notice, but had to postpone the burial. He sued the vicar for the expenses of the abortive funeral. Held that the notice was bad, and the defect was not waived by the vicar's subsequent conduct.

II. Such notice, in the case of any poor person deceased, whom the guardians of any parish or union are required or authorised by law to bury, may be given to the rector, vicar, or other incumbent in manner aforesaid, and also to the master of any workhouse in which such poor person may have died, or otherwise to the said guardians, by the husband, wife, or next of kin of such poor person, who, for the purposes of this Act, shall be deemed to be the person having the charge of the burial of such deceased poor person; and in any such case it shall be the duty of the said guardians to permit the body of such deceased person to be buried in the manner provided by this Act. Paupers.

As to the cases in which the guardians are required or authorised to bury poor persons deceased, see *infra*.

III. Such notice shall state the day and hour when such burial is proposed to take place, and in case the time so stated be inconvenient on account of some other service having been, previously to the receipt of such notice, appointed to take place in such churchyard or graveyard, or the church or chapel connected therewith, or on account of any by-laws or regulations Time of burial to be stated, subject to variation.

43 & 44 Vict. c. 41.

lawfully in force in any graveyard limiting the times at which burials may take place in such graveyard, the person receiving the notice shall, unless some other day or time shall be mutually arranged within twenty-four hours from the time of giving or leaving such notice, signify in writing, to be delivered to or left at the address or usual place of abode of the person from whom such notice has been received, or at the house where the deceased person is lying, at which hour of the day named in the notice, or (in case of burial in a churchyard, if such day shall be a Sunday, Good Friday, or Christmas Day) of the day next following, such burial shall take place; and it shall be lawful for the burial to take place, and it shall take place, at the hour so appointed or mutually arranged, and in other respects in accordance with the notice: Provided that, unless it shall be otherwise mutually arranged, the time of such burial shall be between the hours of ten o'clock in the forenoon and six o'clock in the afternoon if the burial be between the first day of April and the first day of October, and between the hours of ten o'clock in the forenoon and three o'clock in the afternoon if the burial be between the first day of October and the first day of April: Provided also, that no such burial shall take place in any churchyard on Sunday, or on Good Friday or Christmas Day, if any such day being proposed by the notice shall be objected to in writing for a reason assigned by the person receiving such notice.

The "reason assigned" mentioned in the last section is apparently entirely in the discretion of the person who assigns it.

Burial to take place accordingly.

IV. When no such intimation of change of hour is sent to the person from whom the notice has been received, or left at the house where the deceased person

is lying, the burial shall take place in accordance with and at the time specified in such notice. 43 & 44 Vict. c. 41.

V. All regulations as to the position and making of the grave which would be in force in such churchyard or graveyard in the case of persons interred therein with the service of the Church of England shall be in force as to burials under this Act; and any person who, if the burial had taken place with the service of the Church of England, would have been entitled by law to receive any fee, shall be entitled, in case of a burial under this Act, to receive the like fee in respect thereof. Regulations and fees.

The clergyman has an absolute discretion in choosing the site of the grave (*Ex parte Blackmore*, [1830] 1 B. & Ad. 122).

If the incumbent or minister is not present at the burial to perform the burial service or receive his fee, he is not entitled to any fee (*Wood* v. *Headingley-cum-Burley Burial Board*, [1892] 1 Q. B. 713).

As to the right to fees for burial at common law, see Introduction, *ante*, p. 21; as to such right under the Burial Acts, see 15 & 16 Vict. c. 85, s. 32, *et seq.*, *ante*, p. 122, and notes thereon.

This Act does not permit the erection in consecrated ground of tombstones or monuments bearing inscriptions containing words contrary to the doctrines of the Church of England. See Introduction, *ante*, p. 19.

VI. At any burial under this Act all persons shall have free access to the churchyard or graveyard in which the same shall take place. The burial may take place, at the option of the person so having the charge of or being responsible for the same as aforesaid, either without any religious service, or with such Christian and orderly religious service at the grave as such person shall think fit; and any person or persons who shall be thereunto invited, or be authorised by the person having the charge of or being responsible for such burial, may Burial may be with or without religious service.

43 & 44 Vict. c. 41.

conduct such service or take part in any religious act thereat. The words "Christian service" in this section shall include every religious service used by any church, denomination, or person professing to be Christian.

See note to s. 13.

It will be noticed that no service can be performed in a churchyard or a graveyard with any other rites than those of persons professing to be Christians.

Burials to be conducted in a decent and orderly manner and without obstruction.

VII. All burials under this Act, whether with or without a religious service, shall be conducted in a decent and orderly manner; and every person guilty of any riotous, violent, or indecent behaviour at any burial under this Act, or wilfully obstructing such burial or any such service as aforesaid thereat, or who shall, in any such churchyard or graveyard as aforesaid, deliver any address, not being part of or incidental to a religious service permitted by this Act, and not otherwise permitted by any lawful authority, or who shall, under colour of any religious service or otherwise, in any such churchyard or graveyard, wilfully endeavour to bring into contempt or obloquy the Christian religion, or the belief or worship of any church or denomination of Christians, or the members or any minister of any such church or denomination, or any other person, shall be guilty of a misdemeanor.

Powers for prevention of disorder.

VIII. All powers and authorities now existing by law for the preservation of order, and for the prevention and punishment of disorderly behaviour in any churchyard or graveyard, may be exercised in any case of burial under this Act in the same manner and by the same persons as if the same had been a burial according to the rites of the Church of England.

Any person guilty of violent or indecent behaviour in a churchyard, or who shall disturb any clergyman celebrating

divine service therein, is liable to a penalty of 5*l.* or to two months' imprisonment (23 & 24 Vict. c. 32, s. 2, *post*, p. 292); and any person causing damage to any monument or fence is liable to imprisonment not exceeding six months, with or without hard labour (24 & 25 Vict. c. 97, s. 39). Other and more ancient statutes on the same topic are referred to in ss. 5 and 6 of 23 & 24 Vict. c. 32, *post*, p. 295. The latter Act applies as well to persons in Holy Orders as to laymen (*Vallancey* v. *Fletcher*, [1897] 1 Q. B. 265). 43 & 44 Vict. c. 41.

Act not to give right of burial where no previous right existed.

IX. Nothing in this Act shall authorise the burial of any person in any place where such person would have had no right of interment if this Act had not passed, or without performance of any express condition on which, by the terms of any trust deed, any right of interment in any burial ground vested in trustees under such trust deed, not being the churchyard or graveyard, or part of the churchyard or graveyard, of the parish or ecclesiastical district in which the same is situate, may have been granted.

As to the right to be buried in a churchyard, see Introduction, *ante*, p. 2, *et seq.*

Burials under Act to be registered.

X. When any burial has taken place under this Act the person so having the charge of or being responsible for such burial as aforesaid shall, on the day thereof, or the next day thereafter, transmit a certificate of such burial, in the form or to the effect of Schedule (B), annexed to this Act, to the rector, vicar, incumbent, or other officiating minister in charge of the parish or district in which the churchyard or graveyard is situate or to which it belongs, or in the case of any burial ground or cemetery vested in any burial board to the person required by law to keep the register of burials in such burial ground or cemetery, who shall thereupon enter such burial in the register of burials of such parish or district, or of such burial ground or cemetery, and

43 & 44 Vict. c. 41.

such entry shall form part thereof. Such entry, instead of stating by whom the ceremony of burial was performed, shall state by whom the same has been certified under this Act. Any person who shall wilfully make any false statement in such certificate, and any rector, vicar, or minister, or other such person as aforesaid, receiving such certificate who shall refuse or neglect duly to enter such burial in such register as aforesaid, shall be guilty of a misdemeanor.

If an incumbent refuses to register a burial duly performed under this Act, he can be compelled to do so by mandamus. (*Reg.* v. *Hall*, [1881] 45 J. P. 436).

The provisions as to keeping registers of burials in grounds created under the Burial Acts are contained in s. 8 of 16 & 17 Vict. c. 134, by which the burial board is to appoint a clerk for the purpose.

Under the Local Government Act, 1894, the authorities for executing the Burial Acts will have the appointment of the clerk.

Order of coroner or certificate of registrar to be delivered to relative, &c., instead of to person who buries.

XI. Every order of a coroner or certificate of a registrar given under the provisions of section seventeen of the Births and Deaths Registration Act, 1874, shall, in the case of a burial under *that* Act, be delivered to the relative, friend, or legal representative of the deceased, having the charge of or being responsible for the burial, instead of being delivered to the person who buries or performs any funeral or religious service for the burial of the body of the deceased; and any person to whom such order or certificate shall have been given by the coroner or registrar who fails so to deliver or cause to be delivered the same shall be liable to a penalty not exceeding forty shillings, and any such relative, friend, or legal representative so having charge of or being responsible for the burial of the body of any person buried under this Act as aforesaid, as to

which no order or certificate under the same section of the said Act shall have been delivered to him, shall, within seven days after the burial, give notice thereof in writing to the registrar, and if he fail so to do shall be liable to a penalty not exceeding ten pounds. 43 & 44 Vict. c. 41.

See note to s. 8 of 16 & 17 Vict. c. 134, *ante*, p. 156.

Section 17 of the Births and Deaths Registration Act, 1874 (37 & 38 Vict. c. 88) is set out *post*, p. 454.

To remove the doubts created by the use of the word *that* in this section, the Burial and Registration Acts (Doubts Removal) Act, 1881 (44 & 45 Vict. c. 2), was passed. The Act is set out *infra*, p. 250.

Liberty to use burial service of Church of England in unconsecrated ground.

XII. No minister in holy orders of the Church of England shall be subject to any censure or penalty for officiating with the service prescribed by law for the burial of the dead according to the rites of the said Church in any unconsecrated burial ground or cemetery or part of a burial ground or cemetery, or in any building thereon, in any case in which he might have lawfully used the same service, if such burial ground or cemetery or part of a burial ground or cemetery had been consecrated. The relative, friend, or legal representative having charge of or being responsible for the burial of any deceased person who had a right of interment in any such unconsecrated ground vested in any burial board, or provided under any Act relating to the burial of the dead, shall be entitled, if he think fit, to have such burial performed therein according to the rites of the Church of England by any minister of the said Church who may be willing to perform the same.

Apparently before this Act a clergyman could legally perform, but could not be compelled to perform, the burial service in unconsecrated ground (*Kingsmill* v. *Rugg*, [1868] L. R. 2 P. C. 59).

43 & 44 Vict. c. 41.

Relief of clergy of Church of England from penalties in certain cases.

XIII. From and after the passing of this Act, it shall be lawful for any minister in holy orders of the Church of England authorised to perform the burial service, in any case where the office for the burial of the dead according to the rites of the Church of England may not be used, and in any other case at the request of the relative, friend, or legal representative having the charge of or being responsible for the burial of the deceased, to use at the burial such service, consisting of prayers taken from the Book of Common Prayer and portions of Holy Scripture, as may be prescribed or approved of by the ordinary, without being subject to any ecclesiastical or other censure or penalty.

This Act removes two previous restrictions which produced the result that no service but that of the Church of England could be performed in consecrated ground. Before its enactment no person not in Holy Orders could perform any service in consecrated ground. That restriction is removed by s. 6. Further, no person in Holy Orders could perform any service in consecrated ground except the burial service of the Church of England. This section entitles him so to do.

Saving as to ministers of Church of England.

XIV. Save as is in this Act expressly provided as to ministers of the Church of England, nothing herein contained shall authorise or enable any such minister who shall not have become a declared member of any other Church or denomination, or have executed a deed of relinquishment under the Clerical Disabilities Act, 1870, to do any act which he would not by law have been authorised or enabled to do if this Act had not passed, or to exempt him from any censure or penalty in respect thereof.

The Act referred to is 33 & 34 Vict. c. 91.

Application of Act.

XV. This Act shall extend to the Channel Islands, but shall not apply to Scotland or to Ireland.

XVI. This Act may be cited as the Burial Laws Amendment Act, 1880. 43 & 44 Vict. c. 41. Short title of Act.

See the note to s. 2 of 34 & 35 Vict. c. 33, *ante*, p. 237.

SCHEDULES TO WHICH THIS ACT REFERS.

SCHEDULE (A).

Notice of Burial.

I , of , being the relative [*or* friend, *or* legal representative, *as the case may be, describing the relation if a relative,*] having the charge of or being responsible for the burial of *A.B.*, of , who died at , in the parish of , on the day of , do hereby give you notice that it is intended by me that the body of the said *A.B.* shall be buried within the [*here describe the churchyard or graveyard in which the body is to be buried,*] on the day of , at the hour of , without the performance in the manner prescribed by law of the service for the burial of the dead according to the rites of the Church of England, and I give this notice pursuant to the Burial Laws Amendment Act, 1880.

To the Rector [*or, as the case may be,*] of

SCHEDULE (B).

I , of , the person having the charge of [*or* being responsible for] the burial of the deceased, do hereby certify that on the day of , *A.B.* of , aged , was buried in the churchyard [*or* graveyard] of the parish [*or* district] of .

To the Rector [*or, as the case may be,*] of .

44 Vict. c. 2.

44 VICT. C. 2.

An Act to remove Doubts as to the operation and effect of so much of the Burial Laws Amendment Act, 1880, as relates to the Births and Deaths Registration Act, 1874. [17th February, 1881.]

WHEREAS doubts have arisen as to the operation and effect of the eleventh section of the Burial Laws Amendment Act, 1880, by reason of a clerical error in the first sentence thereof; and it is expedient that such doubts should be removed:

43 & 44 Vict. c. 41.

Be it declared and enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Explanation of 43 & 44 Vict. c. 41, s. 11.

I. Nothing in the eleventh section of the Burial Laws Amendment Act, 1880, shall have, or be deemed in law to have had, the effect of repealing, or in any manner altering, any of the provisions contained in the seventeenth section of the Births and Deaths Registration Act, 1874, in any case whatever, save and except only the case of a burial under the Burial Laws Amendment Act, 1880.

37 & 38 Vict. c. 88.

43 & 44 Vict. c. 41.

The Burial Laws Amendment Act, 1880, is set out, *ante*, p. 239, and the Births and Deaths Registration Act, *infra*, p. 454.

Construction of 43 & 44 Vict. c. 41, s. 11.

II. The words "in the case of a burial under that Act" in the first sentence of section eleven of the Burial Laws Amendment Act, 1880, shall be construed and read as if they had been "in the case of a burial under this Act."

Short title.

III. This Act may be cited as the Burial and Registration Acts (Doubts Removal) Act, 1881.

48 & 49 VICT. C. 21.

48 & 49 Vict. c. 21.

An Act to amend the Law with respect to Contested Elections of Burial Boards.

[25th June, 1885.]

Preamble.

WHEREAS it is expedient that provision should be made with respect to the payment of expenses incurred in contested elections of burial boards appointed by vestries:

Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Short title

I. This Act may be cited as the Burial Boards (Contested Elections) Act, 1885.

Expenses of polls to be paid by the burial board.

II. The reasonable expenses incurred in taking a poll of the ratepayers of any parish or part of a parish on the occasion either of the appointment or re-appointment by the vestry of persons to be the burial board for such parish or part of a parish, or of the filling up by the vestry of any vacancy or vacancies on such burial board, shall be defrayed by the burial board in the same manner as if they were expenses incurred by such burial board in carrying the Burial Acts into execution, and may be included in any certificate to the overseers in respect of the expenses of such burial board.

Where a burial board is elected under the Local Government Act, 1894, by a parish meeting having no parish council, the expenses of a poll are by s. 7, sub-s. 6 of that Act to be

48 & 49 Vict. c. 21. incident as provided by the Burial Acts, and any property applicable to the payment of such expenses shall continue to be so applicable where the parish council is the authority for executing the Burial Acts. The expenses of its election will be paid as provided by s. 48 of the Local Government Act, 1894.

45 & 46 Vict. c. 19.

45 & 46 VICT. C. 19.

An Act to amend the law relating to the Interment of any person found felo de se. [3rd July, 1882.]

WHEREAS it is expedient that the laws and usages relating to the interment of the remains of persons against whom a finding of *felo de se* shall be had should be further altered and amended:

Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Repeal of 4 Geo. IV. c. 52. I. The Act of the fourth year of George the Fourth, chapter fifty-two, intituled "An Act to alter and amend the law relating to the interment of the remains of any person found *felo de se*," shall be and the same is hereby repealed.

Coroner to give directions for interment. II. From and after the passing of this Act it shall not be lawful for any coroner or other officer having authority to hold inquests to issue any warrant or other process directing the interment of the remains of persons against whom a finding of *felo de se* shall be had in any public highway, or with any stake being driven through the body of such person, but such

coroner or other officer shall give directions for the interment of the remains of such person *felo de se* in the churchyard or other burial ground of the parish or place in which the remains of such person might by the laws or custom of England be interred if the verdict of *felo de se* had not been found against such person. 45 & 46 Vict. c. 19.

The exclusion of persons *felo de se* from Christian burial is of very ancient origin. It seems doubtful whether the exclusion did not originally apply to all suicides whether they had or had not been insane, madness being regarded as one form of instigation of the devil (see Phill. Ecc. Law 670). In time, however, a distinction was made between sane and insane suicides. It was the custom to bury the bodies of the former in a public highway with a stake in their insides. By 4 Geo. IV. c. 52, referred to in s. 1, it was enacted that the coroner should give directions for the private interment of such bodies without any stake being driven through them in the burial ground of the place in which they might have been interred if the verdict of *felo de se* had not been found. The interment was to be made within twenty-four hours of the finding of the inquisition, and to take place between nine and twelve at night. The statute, however, expressly denied the bodies the rites of Christian burial. The present Act by s. 3 allows the bodies of persons *felo de se* to be buried in any of the ways prescribed or authorised by the Burial Laws Amendment Act, 1880 (43 & 44 Vict. c. 41), *ante*, p. 239. Its effect is that the bodies may be buried in any of the ways allowed by law, except by a clergyman of the Church of England according to the rites of the Church in consecrated ground.

The clergyman has no right to take part in the inquisition, and is bound by the verdict. He must bury the body without inquiring into the propriety of the decision (*Cooper* v. *Dodd*, [1850] 2 Rob. Ecc. 270). Even persons dying drunk must be buried with the rites of the Church (*ibid.*).

III. The interment of any such person as aforesaid may be made in any of the ways prescribed or authorised by the Burial Laws Amendment Act, 1880. Interment. 43 & 44 Vict. c. 41.

See note to last section.

45 & 46 Vict. c. 19.

Rites of Christian burial not to be performed on interment.

IV. Save as aforesaid, nothing herein contained shall authorise the performing of any of the rites of Christian burial on the interment of the remains of any such person as aforesaid, or be taken to alter the laws or usages relating to the burial of such persons.

Extent of Act.

V. This Act shall extend to the Channel Islands, but shall not apply to Scotland or to Ireland.

Short title.

VI. This Act may be cited as the Interments (*felo de se*) Act, 1882.

48 Geo. III. c. 75.

48 GEO. III. c. 75.

An Act for providing suitable Interment in Churchyards or Parochial Burying Grounds in England, *for such dead Human Bodies as may be cast on Shore from the Sea, in cases of Wreck or otherwise.*

[18th June, 1808.]

WHEREAS no provision hath yet been made by the laws now in force for providing suitable interment in churchyards or parochial burying grounds, for such dead human bodies as may be cast on shore from the sea by wreck or otherwise, in that part of the United Kingdom called *England*: and whereas it is expedient that provision should be made for the decent interment of such bodies; may it therefore please your Majesty that it may be enacted; and be it enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and

In cases where dead human

by the authority of the same, that, from and after the passing of this Act, the churchwarden and church-

wardens, overseer and overseers of the poor for the time being of the respective parishes throughout *England*, in which any dead human body or dead human bodies shall be found thrown in or cast on shore from the sea by wreck or otherwise, shall and he and they is and are hereby required, upon notice to him or them given that any such body or bodies are thrown in or cast on shore by the sea, and is or are lying within the bounds of the parish for which he or they shall be churchwarden or churchwardens, overseer or overseers of the poor, to cause the same to be forthwith removed to some convenient place, and with all convenient speed to cause such body or bodies to be decently interred in the churchyard or burial ground of such parish, so that the expenses attending on such burial do not exceed the sum which at that time is allowed in such parish for the burial of any person or persons buried at the expense of such parish: provided always, that in case any such body or bodies shall be thrown in or cast on shore from the sea in any extra-parochial place where there is no churchwarden or churchwardens, overseer or overseers of the poor, then and in every such case the constable or headborough of such place shall, on notice being given to him that such body or bodies is or are lying in such extra-parochial place, forthwith cause such body or bodies to be removed to some convenient place, and with all convenient speed cause the same to be buried in such and the like manner as the churchwardens and overseers within *England* are hereby required to bury such body or bodies.

48 Geo. III. c. 75.

bodies shall be cast on shore, churchwardens, &c. of the parish where the body shall be found to cause the same to be removed and interred in a decent manner in the churchyard of such parish.

By the Short Titles Act, 1896 (59 & 60 Vict. c. 14), this Act may be cited by the short title of "The Burial of Drowned Persons Act, 1808."

This Act has been extended by the Drowned Persons

48 Geo. III. c. 75. (Discovery and Interment) Act, 1886, *infra*, p. 262, which was passed in consequence of the decision in *The Overseers of Woolwich* v. *Robertson*, [1881] 6 Q. B. D. 654; 50 L. J. M. C. 87; 44 L. T. N. S. 747; 29 W. R. 892; 45 J. P. 766.

In this case a steamship was sunk by collision in the river Thames, near Woolwich, at a place below low-water mark, and a number of persons on board were drowned. Some of the bodies were found ashore within the boundaries of Woolwich, in Kent, and were buried by the overseers. The river Thames at Woolwich, and at the places where the bodies were found ashore, is a navigable tidal river where great ships go. It was held by the Court that the county treasurer could not be made liable for the expenses incurred by the overseers, for the bodies were not cast on shore "from the sea" within the meaning of this Act.

Minister of the parish to perform the funeral service, &c.

II. And be it further enacted, that every minister, parish clerk, and sexton of such respective parishes shall perform their several and respective duties in such and the like manner as is customary in other funerals, and shall admit of such body or bodies being interred in such churchyards or burial grounds without any improper loss of time, receiving for the same, by way of compensation, such and the like sums as in cases of burials made at the expense of such parishes.

Rewarding persons finding dead human bodies, and giving notice thereof to parish officers.

III. And be it further enacted, that in case any person or persons shall find any such body or bodies cast on shore from the sea by wreck or otherwise, and shall within six hours thereafter give notice thereof to some one of the churchwardens or overseers of the poor of the parish for the time being in which such body or bodies shall be found, or to the constable or headborough for the time being, in case such body or bodies shall be found in any extra-parochial place, or cause such notice to be left at his or their last or usual place or places of abode, then and in every such case such person or persons shall receive the sum of five

shillings for his, her, or their trouble, such sum to be forthwith paid to the person or persons first giving such notice only; but nevertheless that no greater sum than five shillings shall be paid for any one notice, although there may be a greater number of such bodies than one.

Persons finding dead human bodies cast on shore, and not giving notice, subject to a penalty.

IV. Provided always, and be it further enacted, that in case any person or persons shall find any such body or bodies cast on shore from the sea by wreck or otherwise, and shall not within six hours thereafter give notice to some one of the churchwardens or overseers of the poor of the parish for the time being in which such body or bodies shall be found, or to the constable or headborough for the time being, in case such body or bodies shall be found in any extra-parochial place, or cause such notice to be left at his or their last or usual place or places of abode, then and in every case such person or persons shall for every such offence forfeit and pay the sum of five pounds.

Notice of the finding is deemed to be duly given if given to a police-constable within the time specified. See 49 Vict. c. 20, s. 1, *infra*.

Expenses to be paid by churchwardens, &c.

V. And be it further enacted, that all necessary and proper payments, costs, charges, and expenses which shall be made or incurred in or about the execution of this Act, shall be made and paid by the churchwarden or churchwardens, overseer or overseers, constable or headborough for the time being of such respective parishes and places as aforesaid.

See note to s. 1, *supra*.

Who are to be reimbursed by the treasurer of the county.

VI. And, for the purpose of reimbursing him or them all such payments, costs, charges, and expenses, be it further enacted, that it shall and may be lawful to and for any one justice of the peace for the county or place within that part of the United Kingdom called

48 Geo. III. c. 75.

England, in which any such body or bodies shall have been so removed and buried as aforesaid, by any writing under his hand, to order and direct the treasurer for such county to pay such sum or sums of money to such churchwarden and churchwardens, overseer and overseers, constable or headborough, for his or their costs and expenses in or about the execution of this Act (after the same shall have been duly verified on oath) as to the said justice shall seem reasonable and necessary; and such treasurer shall and he is hereby authorised and required forthwith to pay the sum or sums of money so ordered and directed to be paid to the person or persons empowered to receive the same; and such treasurer shall be allowed the same in his accounts.

A justice's order made under this section, after stating that he had inquired into and ascertained on oath the costs and expenses, amounting to 1*l.* 5*s.*, incurred by the churchwardens and overseers by reason of a dead human body having been found and brought on to the shore within their parish, directed the county treasurer to pay to them the said sum of 1*l.* 5*s.* according to the provisions of this Act. It was held by the Queen's Bench Division, that the order was bad because it did not show that the expenses in question were proper and necessary expenses incurred in or about the execution of the Act, and therefore did not sufficiently state facts to show, or from which it could be inferred that the justice had jurisdiction to make it (*R.* v. *The Treasurer of the County of Kent*, [1889] 22 Q. B. D. 603; 58 L. J. M. C. 71; 60 L. T. N. S. 426; 37 W. R. 619; 53 J. P. 279; 16 Cox C. C. 583).

Penalty on parish officers neglecting to remove and inter dead human bodies so found or cast on shore.

VII. Provided always, and be it enacted, that in case any such churchwarden or churchwardens, overseer or overseers, constable or headborough, shall refuse or neglect to remove or cause to be removed such body or bodies from the sea shore to some convenient place prior to the interment thereof, for the space of twelve hours after such notice given to him or them, or left

in writing at his or their last or usual place or places of abode by any person or persons whomsoever, or shall neglect or refuse to perform the several other duties required of him and them by this Act, then and in every such case every such churchwarden or overseer, constable or headborough, shall for every such offence forfeit and pay the sum of five pounds. 48 Geo. III. c. 75.

VIII. And be it further enacted, that all penalties and forfeitures which shall be incurred under this Act, *if not paid on conviction, shall be levied and recovered by distress and sale of the goods and chattels of the offender or offenders, by warrant under the hand and seal of any justice of the peace for the county or place where the offence shall happen (which warrant such justice is hereby empowered to grant on the confession of the party, or upon the evidence of any credible witness upon oath), and the surplus of the money arising by such distress and sale shall be returned on demand to the owner of such goods and chattels, after deducting the costs and charges of making, keeping, and selling the distress; and such penalties and forfeitures, when recovered, shall be paid to the informer or informers; and in case sufficient distress shall not be found, or such penalties and forfeitures shall not be paid forthwith, it shall and may be lawful to and for such justice, and he is hereby authorised and required, by warrant under his hand and seal, to cause the offender or offenders to be committed to the common gaol or house of correction of such county or place, there to remain without bail or mainprize, for any time not exceeding two calendar months, nor less than fourteen days, unless such penalties and forfeitures and all reasonable charges attending the recovery thereof, shall be sooner fully paid and satisfied.* Recovery of penalties under this Act.

The words in italics in ss. 8 and 10, the whole of ss. 9 and 11, are repealed by the Summary Jurisdiction Act, 1884 (47

48 Geo. III. c. 75. & 48 Vict. c. 43), s. 4, and the provisions of the latter Act are substituted for the repealed portion of this section.

* * * * * *

Appeal to the Quarter Sessions.

X. Provided always, and be it enacted, that if any person or persons shall think himself, herself, or themselves aggrieved by any judgment or determination, or by any matter or thing done in pursuance of this Act, such person or persons may appeal to the justices of the peace at the *first general or quarter sessions of the peace to be holden for the county or place (within which the matter of appeal shall arise) next after the expiration of one calendar month from the time such matter of appeal shall have arisen, the person or persons appealing having first given ten days notice at least of his or their intention to bring such appeal, and of the matter thereof, to the person or persons so appealed against, and forthwith after such notice entering into a recognizance before some justice of the peace for such county or place, with sufficient sureties conditioned to try such appeal and abide the order and award of the said court thereon; and the said justices at such sessions, upon due proof of such notice and recognizance having been given and entered into, are hereby authorised and required to hear and determine the matter of such appeal in a summary way, and to make such determination therein, and to award such costs to either of the parties, or otherwise, as they shall judge proper;* and the said justices may if they see cause mitigate any fine, penalty, or forfeiture, and may also order such further satisfaction to be made to the party injured as they shall judge reasonable; and all such determinations of the said justices shall be final, binding, and conclusive upon all parties, to all intents and purposes whatsoever.

See note to s. 8.

* * * * * *

XII. Provided always, and be it further enacted, that all penalties and expenses attendant thereon, which shall be incurred under the provisions of this Act, shall be paid and borne by the person or persons incurring the same, and that the parish or place wherein such person or persons ought to have acted in the duties prescribed by this Act shall be wholly exempted therefrom. 48 Geo. III. c. 75. Penalties to be paid by persons incurring the same, and not by the parish.

XIII. Whereas in cases of dead wrecks, wherein no living person is found, or owner known, the lords of manors on which any such dead body or dead bodies may be washed in, and who are entitled to wreck there, have usually paid a small fee for the placing such body or bodies in the ground in the state in which the same have been found, and such payments have been adduced and admitted as proof on trials at common law of the right of such lords of manors to wrecks in such manors; be it therefore enacted, that in all and every such cases it shall and may be lawful to and for all and every lord or lords of any manor or manors throughout *England* to pay or cause to be paid to the churchwarden or churchwardens, overseer or overseers, constable or headborough of such respective parishes and places as aforesaid, such and the like sums as he or they was or were heretofore accustomed to pay for the placing any such body or bodies into the ground as aforesaid; such sums to go in part payment and discharge of the costs and expenses to be incurred in or about the execution of this Act, and credit to be given for the same by such overseers, churchwardens, constable or headborough, in their accounts with the county to which such accounts shall be submitted; any thing in this Act to the contrary thereof in anywise notwithstanding. Lords of Manors, &c. to pay the same fee as heretofore on interring dead human bodies, &c.

XIV. *And for defraying the expenses of the removal* How ex-]

48 Geo. III. c. 75. Expenses of interment shall be defrayed.

and burial of such body or bodies as aforesaid, and all other expenses necessary for the execution of this Act, be it further enacted, that the justices of the peace at the general or quarter sessions may cause such sums of money as shall be necessary for all or any of the purposes aforesaid, to be raised in the same manner as rates are directed to be raised by an Act, made in the twelfth year of the reign of his late Majesty King George the Second, intituled, An Act for the more easy assessing, collecting, and levying of County Rates.

This section was repealed by the Statute Law Revision Act, 1872 (No. 2).

49 Vict. c. 20.

49 VICT. C. 20.

An Act to amend the Law in respect to the Discovery and Interment of Persons Drowned. [*4th June*, 1886.]

WHEREAS an Act was passed in the forty-eighth year of the reign of King George the Third, intituled "An Act for providing suitable interment in churchyards or parochial burying grounds in England for such dead human bodies as may be cast on shore from the sea in cases of wreck or otherwise" (in this Act called "the principal Act"), and it is expedient to amend the same and make it applicable to the discovery and interment of dead human bodies cast on shore from any tidal or navigable waters, and brought on shore:

Be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present

Parliament assembled, and by the authority of the same, as follows: 49 Vict. c. 20.

By the Short Titles Act, 1896 (59 & 60 Vict. c. 14), this Act may be cited as the Burial of Drowned Persons Act, 1886.

I. The provisions of the principal Act shall be deemed to extend and apply not only to dead human bodies found in or cast on shore from the sea by wreck or otherwise, but also to any dead human body or dead human bodies found in or cast on shore from any tidal or navigable waters, and to all such body or bodies found floating or sunken in any such waters and brought on to the shore or bank thereof: provided, that notice of the finding of any such body or bodies shall be deemed to be duly given in pursuance of the principal Act if given to a police constable within the time specified in that Act, and such constable shall forthwith communicate the same to the parish officers mentioned in the said Act. Extension of provisions of principal Act.

THE PUBLIC HEALTH (INTERMENTS) ACT, 1879.

42 & 43 VICT. C. 31. 42 & 43 Vict. c. 31.

An Act to amend the Public Health Act, 1875, as to Interments. [21st July, 1879.]

BE it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows; (that is to say,)

1. This Act may be cited as the Public Health (Interments) Act, 1879, and shall be construed as one with Short title and construction.

42 & 43 Vict. c. 31. the Public Health Act, 1875, in this Act called the principal Act.

38 & 39 Vict. c. 55. As this Act is to be read as one with the Public Health Act, 1875, the powers of ss. 175 and 176 of that Act will be available for the compulsory acquisition of land. See *infra*.

The provisions of 38 & 39 Vict. c. 55 extended to cemeteries.

2.—(1.) The provisions of the principal Act, as to a place for the reception of the dead before interment, in the principal Act called a mortuary, shall extend to a place for the interment of the dead, in this Act called a cemetery; and the purposes of the principal Act shall include the acquisition, construction, and maintenance of a cemetery.

(2.) A local authority may acquire, construct, and maintain a cemetery either wholly or partly within or without their district, subject as to works without their district for the purpose of a cemetery to the provisions of the principal Act as to sewage works by a local authority without their district.

38 & 39 Vict. c. 55, ss. 32 to 34.

(3.) A local authority may accept a donation of land for the purpose of a cemetery, and a donation of money or other property for enabling them to acquire, construct, or maintain a cemetery.

The provisions of the Public Health Act, 1875, relating to mortuaries, are contained in ss. 141 to 143, set out *infra*, and those relating to sewage works are contained in ss. 32 to 34, set out *infra*.

As by s. 141 the Local Government Board can compel a local authority to provide a mortuary, by the extension of that section made by this Act, a local authority can be compelled to provide a cemetery. The Local Government Board have issued a series of model by-laws for cemeteries. See Appendix, *infra*.

The Public Health Act, 1875, and the Public Health (Interments) Act, 1879, do not apply to the county of London or the City of London. The provisions as to mortuaries in the administrative county of London are contained in the Public Health (London) Act, 1891 (54 & 55 Vict. c. 76), ss. 88 to 93, set out *infra*, p. 306. 42 & 43 Vict. c. 31.

A local authority providing a cemetery under this Act and the Cemetery Clauses Act, 1847, will not be subject to the Burial Acts and therefore need not (as would be required by these Acts) provide a consecrated portion of the cemetery.

3. The Cemeteries Clauses Act, 1847, shall be incorporated with this Act. 10 & 11 Vict. c. 65, incorporated with this Act.

This Act is set out *infra*.

THE CEMETERIES CLAUSES ACT, 1847.

10 & 11 Vict. c. 65.

10 & 11 Vict. c. 65.

An Act for consolidating in One Act certain Provisions usually contained in Acts authorising the making of Cemeteries. [9th July, 1847.]

WHEREAS it is expedient to comprise in one Act sundry provisions usually contained in Acts of Parliament authorising the making of cemeteries, and that as well for avoiding the necessity of repeating such provisions in each of the several Acts relating to such undertakings as for insuring greater uniformity in the provisions themselves: Be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, that this Act shall extend only to such cemeteries as shall be authorised by any Act of Parliament hereafter to be passed which Extent of Act:

10 & 11 Vict. c. 65.

shall declare that this Act shall be incorporated therewith, and all the clauses of this Act, save so far as they shall be expressly varied or excepted in any such Act, shall apply to the cemetery authorised thereby, so far as they are applicable to such cemetery, and shall, with the clauses of every other Act incorporated therewith, form part of such Act, and be construed therewith as forming one Act.

The first ten lines of the preamble are repealed by the Statute Law Revision Act, 1891.

Interpretations in this Act.

And with respect to the construction of this Act and any Act incorporated therewith, be it enacted as follows:

"Special Act:"

II. The expression "the special Act" used in this Act shall be construed to mean any Act which shall be hereafter passed authorising the making of a cemetery, and with which this Act shall be incorporated; and the

"prescribed:"

word "prescribed" used in this Act in reference to any matter herein stated shall be construed to refer to such matter as the same shall be prescribed or provided for in the special Act; and the sentence in which such word occurs shall be construed as if instead of the word "prescribed" the expression "prescribed for that purpose in the special Act" had been used; and the

"Lands:"

expression "the lands" shall mean the lands which shall by the special Act be authorised to be taken or

"Company."

used for the purposes thereof; and the expression "the company" shall mean the persons by the special Act authorised to construct the cemetery.

This Act is incorporated with the Public Health Acts by s. 3 of the Public Health (Interments) Act, 1879, *ante*.

Interpretations in this and the special Act.

III. The following words and expressions in both this and the special Act, and any Act incorporated therewith, shall have the meanings hereby assigned to them, unless there be something in the subject or

context repugnant to such construction; (that is to say,) 10 & 11 Vict. c. 65.

Words importing the singular number shall include the plural number, and words importing the plural number only shall include also the singular number: Number:

Words importing the masculine gender shall include females: Gender:

The word "person" shall include a corporation, whether aggregate or sole: "Person:"

The word "lands" shall include messuages, lands, and hereditaments of any tenure: "Lands:"

The expression "the cemetery" shall mean the cemetery or burial ground, and the works connected therewith, by the special Act authorised to be constructed: "the Cemetery:"

The word "month" shall mean calendar month: "Month:"

The expression "superior courts" shall mean Her Majesty's superior courts at *Westminster* or *Dublin*, as the case may require, and shall include the Court of Common Pleas of the County Palatine of *Lancaster* and the Court of Common Pleas of the County of *Durham*: "Superior Courts:"

The word "oath" shall include affirmation in the case of Quakers, and any declaration lawfully substituted for an oath in the case of any other persons allowed by law to make a declaration instead of taking an oath: "Oath:"

The expression "Established Church" shall mean the united Church of *England* and *Ireland* as by law established: "Established Church:"

The word "county" shall include any riding or other division of a county having a separate commission of the peace, and shall also include the county of a city or county of a town: "County:"

10 & 11 Vict. c. 65.

"Justice:" The word "justice" shall mean justice of the peace acting for the place where the matter requiring the cognizance of any such justice arises, and if such matter arise in respect of lands situated not wholly in one jurisdiction shall mean a justice acting for the place where any part of such lands shall be situated; and where any matter is authorised or required to be done by "two justices" the expression "two justices" shall be understood to mean two or more justices met and acting together:

"Two Justices:"

"Quarter Sessions." The expression "quarter sessions" shall mean the quarter sessions as defined by the special Act, or if such expression be not therein defined it shall mean the general or quarter sessions of the peace which shall be held at the place nearest the cemetery for the county or place in which the cemetery or some part thereof is situated, or for some division of such county having a separate commission of the peace.

Most of these definitions are, for Acts passed after 1850, codified by the Interpretation Act, 1889.

The jurisdiction of the Court of Common Pleas at Lancaster, and of the Court of Pleas at Durham, was transferred to and vested in the High Court of Justice by the Judicature Act, 1873 (36 & 37 Vict. c. 66), s. 16, and the words relating to these Courts were repealed by the Statute Law Revision Act, 1891.

The expression "United Church of England and Ireland" is to be read distributively as the Church of England and the Church of Ireland:—Irish Church Act, 1869 (32 & 33 Vict. c. 42), s. 69.

And with respect to citing this Act or any part thereof, be it enacted as follows:

Citing the Act.

Short title of this Act. IV. In citing this Act in other Acts of Parliament, and in legal instruments, it shall be sufficient to use the expression "The Cemeteries Clauses Act, 1847."

10 & 11 Vict. c. 65.

Form in which portions of this Act may be incorporated in other Acts.

V. For the purpose of incorporating part only of this Act with any Act hereafter to be passed it shall be enough to describe the clauses of this Act with respect to any matter in the words introductory to the enactment with respect to such matter, and to enact that the clauses so described, or that this Act with the exception of the clauses so described, shall be incorporated with such Act, and thereupon all the clauses of this Act so incorporated shall, save so far as they are expressly varied or excepted by such Act, form part of such Act, and such Act shall be construed as if such clauses were set forth therein with reference to the matter to which such Act relates.

Making of Cemetery.

And with respect to the making of the cemetery, be it enacted as follows:

Construction of cemetery to be subject to the provisions of this and the Lands Clauses Consolidation Act, 1845.

VI. Where by the special Act the company shall be empowered, for the purpose of making the cemetery, to take or use any lands otherwise than with the consent of the owners and occupiers thereof, they shall, in exercising the power so given to them, be subject to the provisions and restrictions contained in this Act and the Lands Clauses Consolidation Act, 1845, and shall make to the owners and occupiers of and all other parties interested in any lands taken or used for the purposes of the special Act, or injuriously affected by the construction of the works thereby authorised, full compensation for the value of the lands so taken or used, and for all damage sustained by such owners, occupiers, or other parties, by reason of the exercise, as regards such lands, of the powers vested in the company by this or the special Act, or any Act incorporated therewith, and, except where otherwise provided by this or the special Act, the amount of such compensation shall be determined in the manner provided by the Lands

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Clauses Consolidation Act, 1845, for determining questions of compensation with regard to lands purchased or taken under the provisions thereof, and all the provisions of the last-mentioned Act shall be applicable to determine the amount of such compensation, and to enforce payment or other satisfaction thereof.

As to the power to purchase land by local authorities under the Public Health Act, 1875, see ss. 175 and 176 of that Act, *post*. For provisions of the Lands Clauses Consolidation Act, 1845, see *post*.

Errors and omissions in Act or Schedule to be corrected by justices, who shall certify the same.

VII. If any omission, mis-statement, or wrong description shall have been made of any lands, or of the owners, lessees, or occupiers of any lands described in the special Act or the schedule thereto, the company, after giving ten days notice to the owners of the lands affected by such proposed correction, may apply to two justices for the correction thereof, and if it appear to such justices that such omission, mis-statement, or wrong description arose from mistake, they shall certify the same accordingly, and shall in such certificate state the particulars of any such omission, mis-statement, or wrong description; and such certificate shall be deposited with the clerk of the peace of the county in which the lands affected thereby shall be situated, and thereupon the special Act or schedule shall be deemed to be corrected according to such certificate, and the company may take the lands according to such certificate, as if such omission, mis-statement, or wrong description had not been made.

Certificate to be deposited.

As to the deposit of the certificate with the clerk of the peace, see s. 83 (6) of the Local Government Act, 1888, which substitutes clerk of the county council for clerk of the peace.

Copies of plans, &c. to be evidence.

VIII. Copies of any alteration or correction of the special Act, or the schedule thereto, or of any extract therefrom, certified by any such clerk of the peace in

whose custody such alteration or correction may be, which certificate such clerk of the peace shall give to all parties interested, when required, shall be received in all courts of justice or elsewhere as evidence of the contents thereof. 10 & 11 Vict. c. 65.

IX. The company shall not sell or dispose of any land which shall have been consecrated or used for the burial of the dead, or make use of such land for any purpose except such as shall be authorised by this or the special Act, or any Act incorporated therewith. Company not to dispose of any land consecrated or used for burials.

As to the sale of surplus unconsecrated land in which interments have not taken place, see s. 24 of 20 & 21 Vict. c. 81, *ante*, p. 221; and as to sale by a burial board of such land, see s. 28 of 15 & 16 Vict. c. 85, *ante*, p. 118.

X. No part of the cemetery shall be constructed nearer to any dwelling house than the prescribed distance, or if no distance be prescribed, two hundred yards, except with the consent in writing of the owner, lessee, and occupier of such house. Cemetery not to be within a certain distance houses.

Similar provisions are contained in the Burial Act, 1855, s. 9, *ante*, p. 174, where see the note.

XI. The company upon any land which by the special Act they are authorised to use for the purposes of the cemetery may build such chapels for the performance of the burial service as they think fit, and may lay out and embellish the grounds of the cemetery as they think fit. Company may build chapels, &c.

If the cemetery or a portion is consecrated, a chapel must be built for the service for burial in such consecrated portion (see s. 25, *infra*, p. 275, and note to s. 2 of 42 & 43 Vict. c. 31, *ante*, p. 265).

XII. The company upon any land purchased by them under this or the special Act, or any Act incorporated therewith, may make any new roads to the cemetery, Company may make or widen roads to cemetery.

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or widen or improve any existing roads thereto which they think fit.

No road to be widened without consent.

XIII. Provided always, that the company shall not widen or improve any existing road without the consent of the owner thereof, if the road be private, or if the road be public, without the consent of the persons in whom the management of the road is vested by law.

Owners, &c. may enter into agreements for improving roads for that purpose.

XIV. The company and the owners or persons having the management of any such road as aforesaid may enter into such agreements as they think fit, for enabling the company to widen or improve any such road, and for maintaining the same.

Cemetery to be inclosed and fenced.

XV. Every part of the cemetery shall be inclosed by walls or other sufficient fences of the prescribed materials and dimensions, and if no materials or dimensions be prescribed by substantial walls or iron railings of the height of eight feet at least.

Cemetery, &c. to be kept in repair.

XVI. The company shall keep the cemetery and the buildings and fences thereof in complete repair, and in good order and condition, out of the monies to be received by them by virtue of this and the special Act.

Company to make compensation for damages done.

XVII. Provided always, that in the exercise of the powers by this and the special Act granted to the company they shall do as little damage as can be, and shall make full compensation to all parties interested for all damage sustained by them through the exercise of such powers.

In *Crowhurst* v. *The Burial Board of Amersham*, [1878] 4 Ex. Div. 5, the defendants, a burial board, planted on their own land and about four feet distant from the boundary railings a yew-tree, which grew through and beyond the railings, so as to project over an adjoining meadow, which was hired by the plaintiff. The plaintiff's horse feeding in the meadow ate of that portion of the yew-tree which projected

over the meadow, and died of the poison contained therein. The tree was planted and grown with the knowledge of the defendants. It was held that the defendants were liable to the plaintiff for the value of the horse. 10 & 11 Vict. c. 65.

And with respect to preventing nuisance from the cemetery, be it enacted as follows: *Prevention of Nuisances.*

XVIII. The company shall make all necessary and proper sewers and drains in and about the cemetery, for draining and keeping the same dry, and they may from time to time, as occasion requires, cause any such sewer or drain to open into any existing sewer, with the consent in writing of the persons having the management of such sewer, and with the consent in writing of the persons having the management of the street or road, and of the owners and occupiers of the lands through which such opening is made, doing as little damage as possible to the road or ground wherein such sewer or drain may be made, and restoring it to the same or as good condition as it was in before being disturbed. Power to make sewers, drains, &c. in and about the cemetery.

XIX. When any street or road or sewer shall be opened, with such consent as aforesaid, the clauses of the Waterworks Clauses Act, 1847, with respect to breaking up streets for the purpose of laying pipes, so far as the same are consistent with this Act and applicable thereto, shall be incorporated with this Act, and shall apply to the company, and to any ground broken by them for making any such sewer or drain as aforesaid to open into any existing sewer. Certain provisions of Waterworks Clauses Act, 1847, incorporated with this Act.

The sections referred to are 10 Vict. c. 17, ss. 28 to 34, set out *infra*.

XX. If the company at any time cause or suffer to be brought or to flow into any stream, canal, reservoir, aqueduct, pond, or watering place, any offensive matter Penalty for allowing water to be fouled.

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from the cemetery, whereby the water therein shall be fouled, they shall forfeit for every such offence the sum of fifty pounds.

This penalty is in addition to the right of action given by s. 22, *infra* (see also s. 332 of the Public Health Act, 1875, with which this Act is incorporated, and *Snow* v. *Whitehead*, [1884] 27 Ch. D. 588; *Ballard* v. *Tomlinson*, [1885] C. A. 29 Ch. D. 115; and *The National Telephone Company* v. *Baker*, [1893] 2 Ch. 186).

Penalty to be sued for within six months.

XXI. The said penalty, with full costs of suit, may be recovered by any person having right to use the water fouled by such offensive matter, in any of the superior courts, by action of debt or on the case: provided always, that the said penalty shall not be recoverable unless the same be sued for during the continuance of the offence, or within six months after it has ceased.

In addition to penalty of 50*l.*, a daily penalty during the continuance of the offence.

XXII. In addition to the said penalty of fifty pounds (and whether such penalty is recovered or not), any person having right to use the water fouled by such offensive matter may sue the company in an action on the case in any court of competent jurisdiction for any damage specially sustained by him by reason of the water being so fouled; or if no special damage be alleged, for the sum of ten pounds for each day during which such offensive matter is brought or flows as aforesaid after the expiration of twenty-four hours from the time when notice of the offence is served on the company by such person.

Burials.

And with respect to burials in the cemetery, be it enacted as follows:

A part of cemetery to be set apart and consecrated for

XXIII. The bishop of the diocese in which the cemetery is situated may, on the application of the company, consecrate any portion of the cemetery set

apart for the burial of the dead according to the rites of the Established Church, if he be satisfied with the title of the company to such portion, and thinks fit to consecrate such portion; and the part which is so consecrated shall be used only for burials according to the rites of the Established Church.

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burial of members of Established Church.

See note to s. 2 of 42 & 43 Vict. c. 31, *ante*, p. 265, and s. 11, *ante*, p. 271.

XXIV. The company shall define by suitable marks the consecrated and unconsecrated portions of the cemetery.

Consecrated ground to be defined.

As to division of burial grounds into consecrated and unconsecrated portions under the Burial Acts, see note to s. 11 of 20 & 21 Vict. c. 81, *ante*, p. 212. Probably the marks referred to in that section would be sufficient under this section. A wall twelve inches high has been held to be sufficient (*R.* v. *Tiverton*, [1858] 31 L. T. (O. S.) 233).

XXV. The company shall build, within the consecrated part of the cemetery, and according to a plan approved of by the bishop of the diocese, a chapel for the performance of the burial service according to the rites of the Established Church.

A chapel in connexion with the Established Church to be constructed.

XXVI. No body buried in the consecrated part of the cemetery shall be removed from its place of burial without the like authority as is by law required for the removal of any body buried in the churchyard belonging to a parish church.

Bodies when interred not to be removed without lawful authority.

See as to disinterment, the Introduction, pp. 41–43.

XXVII. The company shall from time to time, with the approval of the bishop of the diocese in which the cemetery is situated, appoint a clerk in holy orders of the Established Church to officiate as chaplain in the consecrated part of the cemetery; and such chaplain shall be licensed by and be subject to the jurisdiction

Chaplain to be appointed with consent of the bishop.

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of the said bishop, and the said bishop shall have power to revoke any such license, and to remove such chaplain, for any cause which appears to him reasonable.

Chaplain to perform burial service when required.

XXVIII. The chaplain shall, when required, unless prevented by sickness or other reasonable cause, perform the burial service over all bodies brought to be buried in the consecrated part of the cemetery which are entitled to be buried in consecrated ground according to the rites and usage of the Established Church.

Other clergymen of the Established Church may be allowed to officiate.

XXIX. Any clerk in holy orders of the Established Church, not being prohibited by the bishop, nor under ecclesiastical censure, at the request of the executor of the will of any deceased person, or any other person having the charge of the burial of the body of any deceased person, and with the consent of the chaplain for the time being of the cemetery, or if there be no chaplain with the consent of the bishop, may perform the said burial service over such body in the consecrated part of the cemetery.

In consequence of the definition of "graveyard" in s. 1 of 43 & 44 Vict. c. 41, it has been doubted whether that Act applies to cemeteries provided under this Act. If that Act does apply, then this section and ss. 27 and 28 must be read subject to the provisions of s. 1 of 43 & 44 Vict, c. 1, *ante*, p. 239. By that section notice under that Act is to be given to the chaplain of the cemetery. Under the same section the directors of a cemetery have power to make by-laws for carrying out the provisions of that Act.

Company to pay the chaplain a stipend approved by the bishop.

XXX. The company, out of the monies to be received by virtue of this and the special Act, shall allow to the chaplain of the cemetery for the time being such a stipend as is approved of by the bishop of the diocese in which the cemetery is situated, which shall be payable, by equal moieties, on the twenty-fifth day of March

and the twenty-ninth day of September in each year; and if any chaplain die, resign, or be removed or appointed, in the interval between the half-yearly days of payment, the company shall pay to him, or his executors or administrators, a part only of the half-yearly payment of the stipend proportioned to the time during which he shall have been the chaplain since the last preceding day of payment. 10 & 11 Vict. c. 65.

XXXI. If the stipend of the said chaplain, or any part thereof, be not paid to the chaplain entitled to receive the same, or to the executors or administrators of a deceased chaplain, for the space of thirty days next after any of the days of payment whereon the same ought to be paid, such chaplain, or his executors or administrators, may recover the same, with full costs of suit, against the company, by action of debt or upon the case in any court of competent jurisdiction. Stipend to be recovered by action at law.

XXXII. All burials in the consecrated part of the cemetery shall be registered in register books to be provided by the company, and kept for that purpose by the chaplain, according to the laws in force by which registers are required to be kept by the rectors, vicars, or curates of parishes or ecclesiastical districts in England; and such register books, or copies or extracts therefrom, shall be received in all courts in evidence of such burials; and copies or transcripts thereof shall be from time to time sent to the registrar of the ecclesiastical court of the bishop of the diocese in which the cemetery is situated, to be kept with the copies of the other register books of the parishes within his diocese. Burials in the consecrated portion to be registered by the chaplain.

As to the registration of burials, see the Introduction, pp. 86–91. The Registration Acts are set out *infra*, p. 433.

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Registers to be subject to the regulations of 6 & 7 Will. IV. c. 86, as to searches, &c.

XXXIII. The said register books, so far as respects searches to be made therein, and copies and extracts to be taken therefrom, shall be subject to the same regulations as are provided by an Act passed in the seventh year of the reign of his late Majesty, intituled "An Act for registering Births, Deaths, and Marriages in England," so far as such regulations relate to register books of burials kept by any rector, vicar, or curate.

Clerk appointed for the consecrated part of the cemetery.

XXXIV. The company may, with the consent of the chaplain for the time being, from time to time appoint a clerk to assist in performing the service for burials in the consecrated part of the cemetery, and allow to such clerk such stipend as they think proper out of the monies to be received by virtue of this and the special Act, and they may remove such clerk at their pleasure.

As to burial of persons not members of the Church of England.

XXXV. The company may set apart the whole or a portion of that part of the cemetery which is not set apart for burials according to the rites of the Established Church as a place of burial for the bodies of persons not being members of the Established Church, and may allow such bodies to be buried therein, under such regulations as the company appoint.

Company may allow any burial service to be performed in dissenting chapels.

XXXVI. The company may allow, in any chapel built within the unconsecrated part of the cemetery, a burial service to be performed according to the rites of any Church or congregation other than the Established Church, by any minister of such other Church or congregation duly authorised by law to officiate in such church or congregation, or recognised as such by the religious community or society to which he belongs.

Power to appoint gravediggers, &c.

XXXVII. The company may appoint gravediggers and other servants necessary for the care and use of the cemetery, and may pay them such wages and allow-

ances as they think fit out of the monies to be received by virtue of this and the special Act, and may remove them or any of them at their pleasure.

Regulations for ensuring decency and solemnity.

XXXVIII. The company shall make regulations for ensuring that all burials within the cemetery are conducted in a decent and solemn manner.

No burials under or close to chapels.

XXXIX. No body shall be buried in any vault under any chapel of the cemetery, or within fifteen feet of the outer wall of any such chapel.

Exclusive Rights of Burial.

And with respect to exclusive rights of burial, and monumental inscriptions, in the cemetery, be it enacted as follows:

Parts of the cemetery may be set apart for exclusive burial.

XL. The company may set apart such parts of the cemetery as they think fit for the purpose of granting exclusive rights of burial therein, and they may sell, either in perpetuity or for a limited time, and subject to such conditions as they think fit, the exclusive right of burial in any parts of the cemetery so set apart, or the right of one or more burials therein, and they may sell the right of placing any monument or gravestone in the cemetery, or any tablet or monumental inscription on the walls of any chapel or other building within the cemetery.

Monumental inscriptions.

As the company are bound to keep the buildings, external walls, and every part of the cemetery in repair (see s. 16), the company is liable to be rated as occupiers of the whole cemetery, despite such sales or grants in perpetuity as they are empowered to make under this part of the Act (*R.* v. *The Inhabitants of St. Mary Abbot's, Kensington*, [1840] 12 A. & E. 824). The company are still liable as occupiers, even if there is an actual conveyance of the plot of ground to the grantee who is liable to keep the graves in such plot in repair (*R.* v. *Abney Park Cemetery Company*, [1873] L. R. 8 Q. B. 515; 42 L. J. M. C. 124).

The grant of exclusive rights will be subject to the by-laws of the cemetery. A by-law of a cemetery prohibited a dis-

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charged servant from being admitted to the cemetery, except by special leave of the directors, and it authorised his removal. D., the owner of a grave, employed W., a discharged servant, to do some work. *Held*, that there was nothing unreasonable in the by-law, and that W. was rightly excluded by force from the cemetery (*Martin* v. *Wyatt*, [1883] 48 J. P. 215).

Plan and book of reference to be kept, and be open to inspection.

XLI. The company shall cause a plan of the cemetery to be made upon a scale sufficiently large to show the situation of every burial place in all the parts of the cemetery so set apart, and in which an exclusive right of burial has been granted; and all such burial places shall be numbered, and such numbers shall be entered in a book to be kept for that purpose, and such book shall contain the names and descriptions of the several persons to whom the exclusive right of burial in any such place of burial has been granted by the company; and no place of burial, with exclusive right of burial therein, shall be made in the cemetery without the same being marked out in such plan, and a corresponding entry made in the said book, and the said plan and book shall be kept by the clerk of the company.

Form of grant of burial in vault, &c. to be according to schedule.

XLII. The grant of the exclusive right of burial in any part of the cemetery, either in perpetuity or for a limited time, and of the right of one or more burials therein, or of placing therein any monument, tablet, or gravestone, may be made in the form in the schedule to this Act annexed, or to the like effect, and where the company are not incorporated it may be executed by the company or any two or more of them.

Register of grants to be kept.

XLIII. A register of all such grants shall be kept by the clerk to the company, and within fourteen days after the date of any such grant an entry or memorial of the date thereof and of the parties thereto, and also of

the consideration for such grant, and also a proper description of the ground described in such grant, so as the situation thereof may be ascertained, shall be made by the said clerk in such register; and such clerk shall be entitled to demand such sum as the company think fit, not exceeding the prescribed sum, or if no sum be prescribed two shillings and sixpence, for every such entry or memorial; and the said register may be perused at all reasonable times by any grantee or assignee of any right conveyed in any such grant, upon payment of the prescribed sum, or if no sum be prescribed the sum of one shilling, to the clerk of the company. 10 & 11 Vict. c. 65.

Rights of burial, &c. to be assignable, or may be bequeathed by will.

XLIV. The exclusive right of burial in any such place of burial shall, whether granted in perpetuity or for a limited time, be considered as the personal estate of the grantee, and may be assigned in his lifetime or bequeathed by his will.

A form of grant of right of burial is given in the Schedule, *infra*, p. 290. See note to 15 & 16 Vict. c. 85, s. 33, *ante*, p. 127.

Form of assignment.

XLV. Every such assignment made in the lifetime of the assignor shall be by deed duly stamped, in which the consideration shall be duly set forth, and may be in the form in the schedule to this Act annexed, or to the like effect.

A form of assignment of the right of burial is given in the Schedule, *infra*, p. 290.

Assignments to be registered.

XLVI. Every such assignment shall, within six months after the execution thereof, if executed in Great Britain or Ireland, or within six months after the arrival thereof in Great Britain or Ireland, if executed elsewhere, be produced to the clerk of the company, and an entry or memorial of such assignment shall be made in the register by the clerk of the company, in the same

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manner as that of the original grant; and until such entry or memorial no right of burial shall be acquired under any such memorial; and for every such entry or memorial the clerk shall be entitled to demand such sum as the company think fit, not exceeding the prescribed sum, or if no sum be prescribed two shillings and sixpence.

Probates of wills to be registered.

XLVII. An entry or memorial of the probate of every will by which the exclusive right of burial within the cemetery is bequeathed, and in case there be any specific disposition of such exclusive right of burial in the said will an entry of such disposition, shall, within six months after the probate of such will, be made in the said register, in the same manner as that of the original grant, and until such entry no right of exclusive burial shall be acquired under such will; and for every such entry or memorial the clerk of the company shall be entitled to demand such sum as the company think fit, not exceeding the prescribed sum, or if no sum be prescribed two shillings and sixpence.

Vaults to be kept exclusively for purchasers of exclusive right.

XLVIII. No body shall be buried in any place wherein the exclusive right of burial shall have been granted by the company, except with the consent of the owner for the time being of such exclusive right of burial.

No such grant to give the right of burial in consecrated ground to certain persons.

XLIX. No such grant as aforesaid shall give the right to bury within the consecrated part of the cemetery the body of any person not entitled to be buried in consecrated ground according to the rites and usage of the Established Church, or to place any monument, gravestone, tablet, or monumental inscription respecting any such body within the consecrated part of the cemetery.

Power to remove monu-

L. The company may take down and remove any gravestone, monument, tablet, or monumental inscrip-

tion which shall have been placed within the cemetery without their authority.

ments improperly erected.

LI. The bishop of the diocese in which the cemetery is situated, and all persons acting under his authority, shall have the same right and power to object to the placing, and to and* procure the removal of any monumental inscription within the consecrated part of the cemetery as he by law has to object to or procure the removal of any monumental inscription in any church or chapel of the Established Church, or the burial ground belonging to such church or chapel, or any other consecrated ground.

Bishop to have power to object to monumental inscriptions in consecrated part of cemetery. [* *Sic.*]

See *Keet* v. *Smith*, [1876] L. R. 4 A. & E. 398, and the cases cited in the Introduction, pp. 18–21.

Payments to Incumbents of Parishes.

And with respect to payments to incumbents of parishes or ecclesiastical districts, and to parish clerks, be it enacted as follows:

Payments to incumbents of parishes from which bodies are brought.

LII. The company shall, on the burial of every body within the consecrated part of the cemetery, pay to the incumbent for the time being of the parish or ecclesiastical district from which such body shall have been removed for burial, such sums, if any, as shall be prescribed for that purpose in the special Act.

As to fees payable to the incumbent, see pp. 21–32 of the Introduction, and the notes to s. 32 of 15 & 16 Vict. c. 85, *ante*, pp. 123–125).

The special Act within the meaning of s. 2, *ante*, p. 266, is, in the case of local authorities, the Public Health (Interments) Act, 1879 (*ante*, p. 263), which does not prescribe any sum as payable to the incumbents of the parishes from which bodies are removed for burial, and such incumbents will therefore not, in the case of a cemetery so provided by a local authority, be entitled to such fees.

Company shall keep account of interments.

LIII. For ascertaining the amount of the payments, if any, to be made to the incumbents of the several parishes or districts aforesaid, the company shall cause

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books to be kept, and entries to be made therein of the names of all persons whose bodies are buried within the consecrated part of the cemetery, and the names of the parishes or districts from which such bodies respectively have been removed, and the manner of their burial within the cemetery (distinguishing whether in a place of exclusive burial or otherwise), with the date of such burial; and such books shall be at all reasonable times open to the inspection of the incumbents for the time being of the said several parishes or districts, or any person employed by them, without fee or reward.

Account of payments due to incumbents of parishes to be rendered half-yearly.

LIV. The company shall on the twenty-fifth day of March and twenty-ninth day of September in each year, or within one month after each of the said days, deliver to the person who is the incumbent of any parish or ecclesiastical district on that day, or to his executors or administrators, on demand made within the said month, an account of the sums, if any, payable in respect of bodies removed for burial within the consecrated part of the cemetery as aforesaid from such parish or ecclesiastical district during the half year next preceding the said twenty-fifth day of March or twenty-ninth day of September, as the case may be.

Fees to be paid to incumbents of parishes half-yearly.

LV. The sums payable by virtue of the special Act shall be paid half-yearly on the twenty-fifth day of March and the twenty-ninth day of September, or within one month afterwards, to the persons who are the incumbents of the parishes or ecclesiastical districts in respect of which the same are payable on such twenty-fifth day of March and twenty-ninth day of September respectively, or the executors or administrators of such incumbents; (that is to say,) such sums as accrue between the twenty-ninth day of September and the twenty-fifth day of March following shall be

paid to the person who is the incumbent on the twenty-fifth day of March, and such sums as accrue between the twenty-fifth day of March and the twenty-ninth day of September following shall be paid to the person who is the incumbent on the twenty-ninth day of September; and if any such sums be not paid to the party entitled to receive the same within the period hereinbefore limited for the payment thereof, such party may recover the same, with full costs, by action of debt or on the case, in any court having competent jurisdiction. 10 & 11 Vict. c. 65.

Payment to be made to the incumbent for the time being, who is to account with his predecessor.

LVI. If any incumbent of any parish or district in respect of which sums are payable by the company by virtue of the special Act ceases to be incumbent, by cession, death, or otherwise, between the said two half-yearly days of payment, such incumbent shall be entitled to receive so much of the sum payable at the half-yearly day which happens next after he ceases to be incumbent as has accrued from the last preceding half-yearly day, or from the time when such incumbent became first entitled to receive the fruits of his living, as the case may require, up to the day at which he ceased to be incumbent, and the incumbent of any parish or district who receives from the company any sum to a part of which any preceding incumbent is entitled under the provisions herein contained shall pay such part to him, his executors or administrators, accordingly; and the company shall not be answerable to any person, other than the actual incumbent for the time being, for the payment of any sums by virtue of this or the special Act.

Company to pay parish clerks the compensation mentioned.

LVII. The company shall, on the burial of every body within the consecrated part of the cemetery, except where the body is buried at the expense of any parish or ecclesiastical district, or union of parishes

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for the relief of the poor, pay to the parish clerk of the parish or ecclesiastical district from which such body has been removed for burial, if he held the office of parish clerk of such parish or ecclesiastical district at the time of the passing of the special Act, but not otherwise, such sum, if any, as shall be prescribed for that purpose in the special Act.

Protection of Cemetery.

And with respect to the protection of the cemetery, be it enacted as follows:

Penalty for damaging the cemetery.

LVIII. Every person who shall wilfully destroy or injure any building, wall, or fence belonging to the cemetery, or destroy or injure any tree or plant therein, or who shall daub or disfigure any wall thereof, or put up any bill therein or on any wall thereof, or wilfully destroy, injure, or deface any monument, tablet, inscription, or gravestone within the cemetery, or do any other wilful damage therein, shall forfeit to the company for every such offence a sum not exceeding five pounds.

Sections 58, 59, and 62 of this Act are incorporated with the Burial Acts (see 15 & 16 Vict. c. 85, s. 40, *ante*, p. 131).

Penalty on persons committing nuisances in the cemetery.

LIX. Every person who shall play at any game or sport, or discharge firearms, save at a military funeral, in the cemetery, or who shall wilfully and unlawfully disturb any persons assembled in the cemetery for the purpose of burying any body therein, or who shall commit any nuisance within the cemetery, shall forfeit to the company for every such offence a sum not exceeding five pounds.

Annual account to be made up, and a copy transmitted to the clerk of the peace, &c., and be open to inspection.

LX. And with respect to the accounts to be kept by the company, be it enacted, that the company shall every year cause an account to be prepared, showing the total receipt and expenditure of all monies levied by virtue of this or the special Act for the year ending on the thirty-first day of December, or some other

convenient day in each year, under the several distinct heads of receipt and expenditure, with a statement of the balance of such account, certified by the chairman of the company, and duly audited, and shall send a copy of the said account, free of charge, to the clerk of the peace for the county in which the cemetery is situated, on or before the expiration of one month from the day on which such accounts end, which last-mentioned account shall be open to the inspection of the public at all reasonable hours, on payment of the sum of one shilling for every such inspection; and if the company omit to prepare or send such account as aforesaid, they shall forfeit for every such omission the sum of twenty pounds. 10 & 11 Vict. c. 65.

LXI. *And with respect to the tender of amends, be it enacted, that if any person shall have committed any irregularity, trespass, or other wrongful proceeding in the execution of this or the special Act, or any Act incorporated therewith, or by virtue of any power or authority thereby given, and if, before action brought in respect thereof, such party make tender of sufficient amends to the party injured, such last-mentioned party shall not recover in any such action; and if no such tender have been made, the defendant, by leave of the court where such action is pending, may at any time before issue joined pay into court such sum of money as he thinks fit, and thereupon such proceedings shall be had as in other cases where defendants are allowed to pay money into court.* Tender of amends.

This section was repealed by the Statute Law Revision Act, 1894. See as to the protection of public authorities from actions without notice and opportunity of tender of amends, the Public Authorities Protection Act, 1893 (56 & 57 Vict. c. 61).

And with respect to the recovery of damages not specially provided for, and of penalties, and to the *Recovery of Damages*

10 & 11 Vict. c. 65. *and Penalties.*

determination of any other matter referred to justices, be it enacted as follows:

8 & 9 Vict. c. 20, incorporated as to damages, &c.

LXII. The clauses of the Railways Clauses Consolidation Act, 1845, with respect to the recovery of damages not specially provided for, and of penalties, and to the determination of any other matter referred to justices, shall be incorporated with this and the special Act; and such clauses shall apply to the cemetery and to the company respectively.

In Ireland part of penalty to be paid to guardians of unions.

LXIII. *Provided always, that in Ireland, in the case of any penalty imposed by justices, where the application is not otherwise provided for, such justices may award not more than one half of such penalty to the informer, and shall award the remainder to the guardians of the poor of the union within which the offence shall have been committed, to be applied in aid of the poor rates of such union.*

This section was repealed by the Statute Law Revision Act, 1875.

All things required to be done by two justices may, in certain cases, be done by one.

LXIV. All things herein or in the special Act, or any Act incorporated therewith, authorised or required to be done by two justices, may and shall be done by any one magistrate having by law authority to act alone for any purpose with the powers of two or more justices.

Persons giving false evidence liable to penalties of perjury.

LXV. Every person who upon any examination upon oath, under the provisions of this or the special Act, or any Act incorporated therewith, shall wilfully and corruptly give false evidence, shall be liable to the penalties of wilful and corrupt perjury.

Access to Special Act.

And with respect to affording access to the special Act, be it enacted as follows:

Copies of special Act to be kept

LXVI. The company shall, at all times after the expiration of six months after the passing of the special

Act, keep in their principal office of business a copy of the special Act, printed by the printers to Her Majesty, or some of them, and shall also, within the space of such six months, deposit in the office of the clerk of the peace of the county in which the cemetery is situated a copy of such special Act so printed as aforesaid; and the said clerk of the peace shall receive and he and the company respectively shall keep the said copies of the special Act, and shall allow all persons interested therein to inspect the same, and make extracts or copies therefrom, in the like manner, and upon the like terms, and under the like penalty for default, as is provided in the case of certain plans and sections by an Act passed in the first year of the reign of Her Majesty, intituled "An Act to compel clerks of the peace for counties and other persons to take the custody of such documents as shall be directed to be deposited with them under the standing orders of either House of Parliament."

10 & 11 Vict. c. 65.

by company at their office, and deposited with the clerk of the peace, and be open to inspection.

7 Will. IV. & 1 Vict. c. 83.

LXVII. If the company fail to keep or deposit any of the said copies of the special Act as hereinbefore mentioned they shall forfeit twenty pounds for every such offence, and also five pounds for every day afterwards during which such copy shall be not so kept or deposited.

Penalty on company failing to keep or deposit such copies.

LXVIII. *And be it enacted, that* nothing herein contained shall be deemed to exempt the company from any general Act relating to burials in towns or populous places which may be passed in the same session of Parliament in which the special Act is passed, or any future session of Parliament.

Company not exempt from provisions of any future general Act.

LXIX. *And be it enacted, that this Act may be amended or repealed by any Act to be passed in this session of Parliament.*

Act may be amended, &c.

10 & 11 Vict. c. 65. The words in italics in ss. 68 and 69 were repealed by the Statute Law Revision Acts, 1875 and 1891.

SCHEDULES TO WHICH THE FOREGOING ACT REFERS.

Form of Grant of Right of Burial.

BY virtue of [*here name the special Act*] we [*here state the name or description of the Company*], in consideration of the sum of to us paid by of do hereby grant unto the said the exclusive right of burial [*or* the right of burying bodies, *as the case may be, or* the right of placing a monument, tablet, or gravestone,] in [*here describe the ground intended for the exclusive burial, or for placing a monument, tablet, or gravestone, as the case may be, so as to identify the same, and if a place of exclusive burial, add,* "numbered on the plan of the cemetery, made in pursuance of the said Act"], to hold the same to the said in perpetuity [*or the period agreed upon*] for the purpose of burial [*or as the case may be*].

Given under our common seal [*or* under our hands and seals, *as the case may be,*] this day of in the year of our Lord

Form of Assignment of Right of Burial.

I *A.B.* of in consideration of the sum of paid to me by *C.D.* of do hereby assign unto the said *C.D.* the exclusive right of burial in [*here describe the place*], and numbered on the plan of the cemetery made in pursuance of the said Act, which was granted to me [*or* unto *A.B.* of] in perpetuity [*or as the case may be*] by [*here state the name of the Company*] by a deed of grant bearing date the day of and all my estate, title, and interest therein, to hold the same unto the said *C.D.* in perpetuity [*or, as the case may be,* for the remainder of the period for which the same was granted by the said Company], subject to the conditions on which I held the same immediately before the execution hereof.

Witness my hand and seal this day of

23 & 24 VICT. C. 32.

23 & 24 Vict. c. 32.

An Act to abolish the jurisdiction of the ecclesiastical courts in Ireland in cases of defamation, and *in England and Ireland in certain cases of brawling.*

[3rd July, 1860.]

WHEREAS it is expedient to abolish the jurisdiction of the ecclesiastical courts of England and Ireland over persons not in holy orders in suits for brawling, and to abolish the jurisdiction of the ecclesiastical courts of Ireland in suits for defamation, as hath already been done with respect to the like jurisdiction in England: Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same:

The words in Roman letters in the title, and the preamble are repealed by the Statute Law Revision Act, 1892.

By the Short Titles Act, 1896, this Act may be cited as the Ecclesiastical Courts Jurisdiction Act, 1860.

Jurisdiction of Ecclesiastical Courts in suits for defamation and brawling abolished as against persons not in holy orders.

I. *That* it shall not be lawful for any ecclesiastical court in England *or Ireland* to entertain or adjudicate upon any suit or cause of brawling *commenced after the passing of this Act* against any person not being in holy orders, *nor shall it be lawful for any ecclesiastical court in Ireland to entertain or adjudicate upon any suit or cause of defamation commenced as aforesaid;* and in the case of every person committed or to be committed to gaol under any writ de contumace capiendo, issued in consequence of any proceedings before any ecclesiastical court in any cause or suit for defamation of character,

Persons in custody for defamation, &c. under order

23 & 24 Vict. c. 32. of Ecclesiastical Courts to be discharged.

or where such person is not in holy orders for brawling, the judge of the ecclesiastical court before whom such proceedings shall have been had shall make an order upon the officer in whose custody such person shall be at any time hereafter for discharging such person out of custody, and such officer shall on the receipt of such order forthwith discharge such person; and it shall not be necessary for such person to take any oath of future obedience to his or her ordinary: Provided always, that such order shall not be made unless the costs lawfully incurred in any such suit shall have been previously paid into the registry of such ecclesiastical court; *provided further, that where any such suit for brawling or defamation has been commenced before the passing of this Act, and final judgment has not been given thereupon, or where final judgment has been given, but the defendant has not been taken under a writ de contumace capiendo pursuant to such judgment, the court, upon payment by the defendant of the costs of suit incurred by the promoter of the office of the judge to the time of the passing of this Act, shall stay all further proceedings therein.*

Order for discharge not to be made until costs lawfully incurred are paid.

The words in italics are repealed by the Statute Law Revision Acts, 1875 and 1892.

Penalty on persons found guilty of making a disturbance in churches, chapels, churchyards, or burial grounds.

II. Any person who shall be guilty of riotous, violent, or indecent behaviour, in England or Ireland in any cathedral church, parish or district church or chapel of the Church of England and Ireland, or in any chapel of any religious denomination, or in England in any place of religious worship duly certified under the provisions of the eighty-first chapter of the statute passed in the session of Parliament of the eighteenth and nineteenth years of the reign of her present Majesty, intituled "An Act to amend the law concerning the certifying and registering of places of religious worship in Eng-

18 & 19 Vict. c. 81.

land," whether during the celebration of divine service or at any other time, or in any churchyard or burial ground, or who shall molest, let, disturb, vex, or trouble, or by any other unlawful means disquiet or misuse any preacher duly authorised to preach therein, or any clergyman in holy orders ministering or celebrating any sacrament, or any divine service, rite, or office, in any cathedral, church, or chapel, or in any churchyard or burial ground, shall on conviction thereof before two justices of the peace be liable to a penalty of not more than five pounds for every such offence, or may, if the justices before whom he shall be convicted think fit, instead of being subjected to any pecuniary penalty, be committed to prison for any time not exceeding two months.

To constitute the offence of molesting, &c. a clergyman, the act must be committed while the clergyman is actually engaged in ministering, &c. (*Cope* v. *Barber*, [1872] L. R. 7 C. P. 393).

In *Vallancey* v. *Fletcher*, [1897] 1 Q. B. 265, it was held that this section applies as well to persons in holy orders as to laymen.

18 & 19 Vict. c. 81 is now, by the Short Titles Act, 1896, to be cited as the Places of Worship Registration Act, 1855. It deals with the registration of the places of worship of Protestant Dissenters, Roman Catholics, and Jews.

Offenders may be, immediately after offence committed, apprehended, &c.

III. Every such offender in the premises after the said misdemeanor so committed immediately and forthwith may be apprehended and taken by any constable or churchwarden of the parish or place where the said offence shall be committed, and taken before a justice of the peace of the county or place where the said offence shall have been so committed, to be dealt with according to law.

Apart from statutory enactment a churchwarden or any other person present at the service has a right to repress indecent

23 & 24 Vict. c. 32.

interruptions of the service, and if necessary to remove the offender from the church or churchyard (*Haw* v. *Planner*, 2 Keb., p. 124; *Glever* v. *Hynde*, 1 Mod., p. 168; *Hutchins* v. *Denziloe*, [1792] 1 Consist. 174). In the last-mentioned case it was said by Lord Stowell that omission by the churchwardens to prevent such interruptions would be a neglect of duty, and that in an extreme case the duty might even be to repress disorderly conduct by the officiating clergyman himself.

This section furnishes an exception to the general rule, that no private person or constable without a warrant can arrest another for a misdemeanour, except for a breach of the peace while the strife is going on, and to prevent its continuance. To bring the offender within the statute the disturbance must be shown to be intentional (*Williams* v. *Glenister*, [1824] 2 B. & C. 699).

Persons aggrieved may appeal against conviction.

IV. Any person convicted as aforesaid who shall think himself aggrieved by such conviction may forthwith appeal to the next court of general or quarter sessions *which shall be holden not less than twelve days after the day of such conviction for the county, riding, division, city, or borough wherein the cause of complaint shall have arisen; provided such person shall enter into a recognizance with two sufficient sureties before the convicting justices, conditioned personally to appear at the said sessions and to try such appeal, and to abide the judgment of the court thereupon, and to pay such costs as shall be by the court awarded; and upon such recognizance being entered into, the justices shall liberate such person, and the court at such sessions shall hear and determine the matter of the appeal, and shall make such order therein, with or without costs to either party, as to the court shall seem meet; and in case of the dismissal of the appeal or the affirmance of the conviction, shall order and adjudge the offender to be punished according to the conviction, and to pay such costs as shall be awarded, and shall, if necessary, issue process for enforcing such judgment.*

The words in italics are repealed by the Summary Jurisdiction Act, 1884 (47 & 48 Vict. c. 43), and by s. 6 of that Act an appeal is to be regulated by the provisions of the Summary Jurisdiction Act, 1879 (42 & 43 Vict. c. 49). 23 & 24 Vict. c. 32.

V. *The Act chapter four of the statute passed in the session of Parliament of the fifth and sixth years of the reign of Edward the Sixth is hereby repealed, so far as relates to persons not in holy orders.* Chapter 4 of statute 5 & 6 Edw. VI. repealed.

Repealed by the Statute Law Revision Act, 1875.

The statute of Edw. VI. which is still in force as to persons in holy orders, provides that any person brawling in a churchyard shall be suspended by the ordinary, and any persons guilty of violence therein shall be deemed excommunicate.

VI. Nothing hereinbefore contained shall be taken to repeal or alter the statute passed in the second session of the first year of the reign of Queen Mary, chapter three; or the statute passed in the first year of the reign of Queen Elizabeth, chapter two; or the eighteenth section of the statute passed in the first year of the reign of King William and Queen Mary, chapter eighteen. Act not to affect statutes of 1 Mar. sess. 2, c. 3, 1 Eliz. c. 2, or s. 18 of 1 W. & M. c. 18.

1 Mar. sess. 2, c. 3, enacted that any person who molested any preacher or any priest performing divine service, or injuring the Holy Sacrament or any cross, &c., might be apprehended immediately and forthwith after the offence committed, by any constable or churchwarden of the parish, &c., or by any other officer or by any other person then being present at the time of the offence or offences so unlawfully committed.

1 Eliz. c. 2 is the Act of Uniformity.

1 W. & M. c. 18, s. 18, provides that if any person shall willingly, and of purpose, maliciously and contemptuously come into any cathedral, parish church, &c., and disquiet or disturb the same, or misuse any preacher or teacher, he shall, on proof thereof before a justice of the peace by two or more witnesses, find sureties in the sum of 50*l.*, and in default

23 & 24 Vict. c. 32.

shall be committed till the next general or quarter sessions, and upon conviction at the sessions shall be fined *20l.*

Nothing to limit power of ordinary over fabric of churches, &c.

VII. Provided also, that nothing herein contained shall limit, restrain, or abolish the power possessed by the ordinary over the fabric of any church or over the churchyard or burial ground connected therewith.

THE INFECTIOUS DISEASE (PREVENTION) ACT, 1890.

53 & 54 Vict. c. 34.

53 & 54 VICT. C. 34.

An Act to prevent the Spread of Infectious Disease.

[4th August, 1890.]

BE it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Short title.

1. This Act may be cited as the Infectious Disease (Prevention) Act, 1890.

Definitions.

2. Expressions used in this Act shall, unless the context otherwise requires, have the same meaning as the like expressions used in the Infectious Disease (Notification) Act, 1889; and the provisions of this Act shall apply to the infectious diseases specifically mentioned in that Act, and may be applied to any other infectious disease in the same manner as that Act may be applied to such disease.

In this Act—

"Dairy" shall include any farm, farmhouse, cowshed, milk-store, milk-shop, or other place from which milk is supplied, or in which milk is kept for purposes of sale:

"Dairyman" shall include any cowkeeper, purveyor of milk, or occupier of a dairy: 53 & 54 Vict. c. 34.

"Medical officer of health" shall include any person duly authorised to act temporarily as medical officer of health:

"*Local authority*" *shall include the Local Board of Woolwich, and the parish of Woolwich shall be deemed to be a London district.*

The words in italics were repealed by the Public Health (London) Act, 1891, which substituted for London the provisions of that Act for those contained in this Act.

Extent of Act.

3. The provisions of this Act shall extend—

(*a.*) *to every London district after the expiration of four months from the passing of this Act; and*

(*b.*) to any urban or rural sanitary district after the adoption thereof;

and the local authority of any urban or rural sanitary district may adopt all or any of the sections of this Act by a resolution passed at a meeting of such authority. Fourteen clear days at least before such meeting special notice of the meeting, and of the intention to propose such resolution, shall be given to every member of the local authority, and the notice shall be deemed to have been duly given to a member if it is either—

(*a.*) given in the mode in which notices to attend meetings of the local authority are usually given; or

(*b.*) where there is no such mode, then signed by the clerk of the local authority and delivered to the member or left at his usual or last known place of abode in England, or forwarded by post in a prepaid letter addressed to the member at his usual or last known place of abode in England.

Every such resolution shall be published by ad-

53 & 54 Vict. c. 34.

vertisement in a local newspaper, and by handbills, and otherwise in such manner as the local authority think sufficient for giving notice thereof to all persons interested, and shall come into operation at such time, not less than one month after the first publication of the advertisement of the resolution, as the local authority may fix; and upon its coming into operation such of the sections of this Act as are mentioned in such resolution shall extend to the district.

A copy of the resolution shall be sent to the Local Government Board when it is published.

A copy of the advertisement shall be conclusive evidence of the resolution having been passed, unless the contrary be shown; and no objection to the effect of the resolution, on the ground that notice of the intention to propose the same was not duly given, or on the ground that the resolution was not sufficiently published, shall be made after three months from the date of the first advertisement.

The words in italics were repealed by the Public Health (London) Act, 1891, which substituted for London the provisions of that Act for those contained in this Act.

Sections 4, 5, 6, 7, relate to matters other than burial, as the inspection of dairies, cleansing and disinfection of bedding and premises.

* * * * * *

Prohibiting retention of dead bodies in certain cases.

8. No person without the sanction in writing of the medical officer of health or of a registered medical practitioner, shall retain unburied elsewhere than in a public mortuary or in a room not used at the time as a dwelling-place, sleeping-place, or work-room, for more than forty-eight hours, the body of any person who has died of any infectious disease.

For corresponding provision as to London see s. 72 of the Public Health (London) Act, 1891, *infra*, p. 303.

53 & 54 Vict. c. 34.

Bodies of persons dying of infectious diseases in hospital, &c., to be removed only for burial.

9. If any person shall die from any infectious disease in any hospital or place of temporary accommodation for the sick, and the medical officer of health, or any other registered medical practitioner, certifies that in his opinion it is desirable, in order to prevent the risk of communicating any infectious disease or of spreading infection, that the body shall not be removed from such hospital or place except for the purpose of being forthwith buried, it shall not be lawful for any person or persons to remove such body from such hospital or place except for the last-mentioned purpose; and when the body is taken out of such hospital for that purpose it shall be forthwith carried or taken direct to some cemetery or place of burial, and shall be forthwith there buried; and any person wilfully offending against this section shall be liable to a penalty not exceeding ten pounds. Nothing in this Act shall prevent the removal of any dead body from any hospital or temporary place of accommodation for the sick to any mortuary, and such mortuary shall, for the purposes of this section, be deemed part of such hospital or place as aforesaid.

For corresponding provision as to London see s. 73 of the Public Health (London) Act, 1891, *infra*, p. 304.

Justices may in certain cases order dead bodies to be buried.

10. Where the body of any person who has died from any infectious disease remains unburied elsewhere than in a mortuary or in a room not used at the time as a dwelling-place, sleeping-place, or work-room, for more than forty-eight hours after death without the sanction of the medical officer of health or of a registered medical practitioner, or where the dead body of any person is retained in any house or building so as to endanger the health of the inmates of such house or building, or of any adjoining or neighbouring house or building, any justice may, on the application of the

53 & 54 Vict. c. 34.

medical officer of health, order the body to be removed at the cost of the local authority to any available mortuary, and direct the same to be buried within a time to be limited in the order; and any justice may, in the case of the body of any person who has died of any infectious disease, or in any case in which he shall consider immediate burial necessary, direct the body to be so buried. Unless the friends or relatives of the deceased undertake to bury and do bury the body within the time limited by such order, it shall be the duty of the relieving officer of the relief district from which the body has been removed to the mortuary, or in which the body shall be, if it has not been so removed, to bury such body, and any expense so incurred may be charged by the relieving officer in his accounts, and may be recovered by the board of guardians in a summary manner from any person legally liable to pay the expenses of such burial.

As to London see s. 89 of the Public Health (London) Act, 1891, *infra*, p. 307.

Disinfection of public conveyances if used for carrying corpses.

11. Any person who hires or uses a public conveyance other than a hearse for the conveyance of the body of a person who has died from any infectious disease, without previously notifying to the owner or driver of such public conveyance that the person whose body is or is intended to be so conveyed has died from infectious disease, and after any such notification as aforesaid, any owner or driver of a public conveyance, other than a hearse, which has been used for conveying the body of a person who has died from infectious disease, who shall not immediately afterwards provide for the disinfection of such conveyance, shall be guilty of an offence under this Act.

As to London see s. 74 of the Public Health (London) Act, 1891, *infra*, p. 305. 53 & 54 Vict. c. 34

* * * * * *

16. Every person who shall wilfully obstruct any duly authorised officer of the local authority in carrying out the provisions of this Act, or who shall obstruct the carrying out of an order made by a justice under this Act, or who shall offend against any enactment of this Act for the time being in force in any district by which no penalty is specifically imposed, shall be liable to a penalty not exceeding five pounds, and if the offence is a continuing one, to a daily penalty not exceeding forty shillings a day so long as the offence continues. Penalties.

* * * * * *

18. Every penalty imposed by this Act shall be recoverable in a court of summary jurisdiction on the information or complaint of the local authority, or of their duly authorised officer, but not otherwise, and shall be paid to the local authority. Recovery and application of penalties.

19. Where a provision of this Act is put in force in any district in which there is any similar provision in force contained in any local Act, such last-mentioned provision shall cease to be in operation. Superseding in certain cases of provisions in local Acts.

20. Any expenses incurred by a local authority in the execution of any of the provisions of this Act, including the reasonable remuneration of any veterinary inspector or surgeon employed under section four, shall be paid as part of the expenses of such authority in the execution of the Acts relating to public health, and in the case of a rural authority shall be general expenses. Expenses.

21. Any resolution adopting all or any of the sections of this Act may be rescinded, either wholly or as regards any of the adopted sections, by resolution of the local authority, but notice of the meeting at which such reso- Power of local authority to rescind adoption of Act.

53 & 54 Vict. c. 34.

lution is to be proposed, and of the intention to propose the same, shall be given, and such resolution shall be published, and shall come into operation, in like manner and at such time as is hereinbefore provided with respect to resolutions adopting this Act, and a copy of the resolution shall be sent to the Local Government Board when it is published.

On the resolution coming into effect the sections of this Act, the adoption of which is thereby rescinded, shall cease to extend to the district.

The provisions hereinbefore contained, as to evidence of and objections to the effect of a resolution adopting this Act, shall apply to any resolution rescinding such adoption.

Extent of Act.

22. This Act shall not apply to Scotland.

Application of Act to Ireland. 52 & 53 Vict. c. 72.

23. This Act shall apply to Ireland, with the same modifications as are made in the Infectious Disease (Notification) Act, 1889, for the purpose of its application to Ireland, and with the following additional modifications :—

In this Act, unless the context otherwise requires—

The expression "Her Majesty's Privy Council" means the Lord Lieutenant acting by the advice of Her Majesty's Privy Council in Ireland:

The expression "inspector of police" includes a member of the Royal Irish Constabulary Force and a member of the Dublin Metropolitan Police.

The reference to section one hundred and twenty of the Public Health Act, 1875, shall be taken to be a reference to section one hundred and thirty-seven of the Public Health (Ireland) Act, 1878.

41 & 42 Vict. c. 52.

Saving for Acts relating to dairies, animals, &c.

24. Nothing in or done under this Act, shall interfere with the operation or effect of the Contagious Diseases (Animals) Acts, 1878 to 1886, or of any order, license,

or act of Her Majesty's Privy Council or the Local Government Board made, granted, or done, or to be made, granted, or done, thereunder; or of any order, regulation, license, or act of a local authority made, granted, or done under any such order of the Privy Council or the Local Government Board; or exempt any dairy, or building, or thing whatsoever, or any body or person from the provisions of any general Act relating to dairies, milk, or animals, already passed, or to be passed in this or any future session of Parliament. 53 & 54 Vict. c. 34.

PUBLIC HEALTH (LONDON) ACT, 1891.

54 & 55 VICT. C. 76.

54 & 55 Vict. c. 76.

An Act to consolidate and amend the Laws relating to Public Health in London. [5th August, 1891.]

* * * * * *

72.—(1.) A person shall not without the sanction in writing of the medical officer of health, or of a legally qualified medical practitioner, retain unburied for more than forty-eight hours elsewhere than in a room not used at the time as a dwelling-place, sleeping-place, or work-room, the body of any person who has died of any dangerous infectious disease. Prohibition of retention of dead body in certain cases.

(2.) If a person acts in contravention of this section he shall, on the information of the sanitary authority, be liable to a fine not exceeding five pounds.

This section reproduces s. 8 of the Infectious Disease (Prevention) Act, 1890.

If a body is retained unburied in contravention of this section, in addition to the penalty herein imposed, the remedy

54 & 55 Vict. c. 76.

is given by s. 89, *infra*, by which a justice may direct the removal to a mortuary and burial of the body.

As to meaning of the expression "dangerous infectious disease," see s. 58 of the Act.

It must be observed, the fine can be imposed on the information of the sanitary authority only. As to the recovery of fines, see s. 117, *infra*, and as to their application, s. 119, *infra*.

Body of person dying of infectious disease in hospital, &c., to be removed only for burial.

73.—(1.) If a person dies in a hospital from any dangerous infectious disease, and the medical officer of health, or any legally qualified medical practitioner, certifies that in his opinion it is desirable, in order to prevent the risk of communicating such infectious disease, that the body be not removed from such hospital except for the purpose of being forthwith buried, it shall not be lawful for any person to remove the body except for that purpose; and the body when taken out of such hospital shall be forthwith taken direct to the place of burial, and there buried.

(2.) If any person wilfully offends against this section he shall, on the information of the sanitary authority, be liable to a fine not exceeding ten pounds.

(3.) Nothing in this section shall prevent the removal of a dead body from a hospital to a mortuary, and such mortuary shall, for the purposes of this section, be deemed part of such hospital.

This section reproduces s. 9 of the Infectious Disease (Prevention) Act, 1890.

Hospital means any premises or vessel for the reception of the sick, whether permanently or temporarily applied for that purpose, and includes an asylum of the Metropolitan Asylum Managers, s. 141.

As to meaning of the expression "dangerous infectious disease," see s. 58 of the Act.

Provision is made for a justice to issue his warrant to give effect to the provisions of this section if offended against; see

s. 89, *infra*. Unless the friends or relations of the deceased undertake to bury the body within a time limited by the justice, the relieving officer will have to bury the body. There is no definition of "burial" in the Act; it would seem, however, that the word would include "cremation." 54 & 55 Vict. c. 76.

As to recovery and application of fines, see ss. 117 and 119, *infra*. The fine under this section can be recovered on information of the sanitary authority only.

Under s. 88, *infra*, every sanitary authority must provide a mortuary and may provide for economical interments at charges to be fixed by bye-laws.

Disinfection of public conveyances if used for carrying corpses.

74. If—

(*a*.) a person hires or uses a public conveyance other than a hearse for conveying the body of a person who has died from any dangerous infectious disease, without previously notifying to the owner or driver of the conveyance that such person died from infectious disease, or

(*b*.) the owner or driver does not, immediately after the conveyance has to his knowledge been used for conveying such body, provide for the disinfection of the conveyance,

he shall, on the information of the sanitary authority, be liable to a fine not exceeding five pounds, and if the offence continues to a further fine not exceeding forty shillings for every day during which the offence continues.

This section reproduces s. 11 of the Infectious Disease (Prevention) Act, 1890. The section is amended so as to make the owner or driver liable for not disinfecting, if the knowledge of the use of the hearse for carrying a dead body of a person dying from a dangerous infectious disease is acquired in any manner, and not merely from the driver.

There is no definition in the Act as to what is included in the expression public conveyance; it may be well thought that a hearse is not a public conveyance, despite the use of the words, "a public conveyance other than a hearse."

54 & 55 Vict. c. 76.

It would seem that the liability would not arise on information of any other person. The words "on information of the sanitary authority" were omitted in s. 65 (1) of the Act, but are retained in ss. 72 and 73.

As to the recovery and application of the fine, see ss. 117 and 119, *infra*.

* * * * * *

Mortuaries, &c.

Power of local authority to provide mortuaries.

88. Every sanitary authority shall provide and fit up a proper place for the reception of dead bodies before interment (in this Act called a mortuary), and may make bye-laws with respect to the management and charges for the use of the same; they may also provide for the decent and economical interment, at charges to be fixed by such bye-laws, of any dead body received into a mortuary.

This section reproduces s. 27 of the Sanitary Act, 1866, and corresponds to s. 141 of the Public Health Act, 1875.

The duty under this section is imperative; under the repealed section in the Sanitary Act, 1866, the power to provide mortuaries was optional. It is only compulsory outside London if the Local Government Board order a sanitary authority to provide a mortuary.

Although the duty is imperative, it may be discharged by the sanitary authority, with the approval of the county council, combining with another sanitary authority to provide one in common, or by contracting for the use of the mortuary of another sanitary authority; s. 91, *infra*.

As to procedure in case of neglect to provide, see ss. 100 and 101 of the Act.

As to power of a sanitary authority to hold land, see s. 99, *infra*.

The expense of providing a mortuary will be defrayed as expenses under this Act are directed to be defrayed, s. 103, *infra*; and the provision of a mortuary is a purpose for which the sanitary authority may borrow, s. 105, *infra*.

As to circumstances under which a dead body is to be removed to a mortuary, see s. 73, *supra*, and s. 89, *infra*.

Places for the reception of dead bodies for the purpose of post-mortem examination may be provided under s. 90 in connection with mortuaries. But that section does not authorise the holding of post-mortem examinations in mortuaries. 54 & 55 Vict. c. 76.

All bye-laws made by a sanitary authority under this Act must be in accordance with the provisions of ss. 182 to 186 of the Public Health Act, 1875; see s. 114; see also s. 142 (3).

The county council have power to provide in London one or two mortuaries to which coroners may order the removal of unidentified dead bodies; s. 93, *infra*.

Power of justice in certain cases to order removal of dead body to mortuary.

89.—(1.) Where either—

(*a.*) the body of a person who has died of any infectious disease is retained in a room in which persons live or sleep; or

(*b.*) the body of a person who has died of any dangerous infectious disease is retained without the sanction of the medical officer of health or any legally qualified medical practitioner for more than forty-eight hours, elsewhere than in a room not used at the time as a dwelling-place, sleeping-place, or work-room; or

(*c.*) any dead body is retained in any house or room, so as to endanger the health of the inmates thereof, or of any adjoining or neighbouring house or building,

a justice may, on a certificate signed by a medical officer of health or other legally qualified medical practitioner, direct that the body be removed, at the cost of the sanitary authority, to any available mortuary, and be buried within the time limited by the justice; and may, if it is the body of a person who has died of an infectious disease, or if he considers immediate burial necessary, direct that the body be buried immediately, without removal to the mortuary.

(2.) Unless the friends or relations of the deceased

54 & 55 Vict. c. 76.

undertake to bury and do bury the body within the time so limited, it shall be the duty of the relieving officer to bury such body, and any expense so incurred shall be paid (in the first instance) by the board of guardians of the poor law union, but may be recovered by them in a summary manner from any person legally liable to pay the expense of such burial.

(3.) If any person obstructs the execution of any direction given by a justice under this section, he shall be liable to a fine not exceeding five pounds.

This section reproduces s. 27 of the Sanitary Act, 1866. Sub-s. (1) (*b*) is taken from s. 10 of the Infectious Disease (Prevention) Act, 1890 (53 & 54 Vict. c. 34), and sub-s. (3) reproduces s. 16 of the same Act. It corresponds to s. 142 of the Public Health Act, 1875.

The retention for more than forty-eight hours of a body of a person who has died from a dangerous infectious disease is prohibited by s. 72, *supra*, p. 303.

The cost of the sanitary authority is the cost of removal to the mortuary, and not the cost of the burial. If the body is removed to the mortuary, the friends will have to bury the body at their own expense within the time limited for burial by the justice's order. If the friends do not bury within that time, the relieving officer will have to bury the body at the expense of the guardians. The guardians under sub-s. (2) will be able to recover this expense from the relatives of the dead person or other person liable in law to pay the expense of burial.

The expenses of the sanitary authority will be defrayed as directed in s. 103, *infra*.

Similar power to that contained in this section is provided in the case of death in a hospital by s. 73, *supra*, p. 304.

As to the power of a justice to grant warrants in case of refusal of admission, and penalties for obstruction, see ss. 115 and 116, *infra*.

As to the recovery of fines, &c., see s. 117, *infra*.

Power of sanitary authority

90.—(1.) Any sanitary authority may, and if required by the county council shall, provide and maintain a

54 & 55 Vict. c. 76.

to provide places for post-mortem examinations.

proper building (otherwise than at a workhouse) for the reception of dead bodies during the time required to conduct any post-mortem examination ordered by a coroner or other constituted authority, and may make regulations with respect to the management of such building.

(2.) Any such building may be provided in connection with a mortuary, but this enactment shall not authorise the conducting of any post-mortem examination in a mortuary.

This section reproduces with amendment s. 28 of the Sanitary Act, 1866, and corresponds to s. 143 of the Public Health Act, 1875.

The section contains an amendment on s. 28 of the Sanitary Act, 1866, as that section did not empower the room for post-mortem examinations being erected in connection with the mortuary.

Under the Sanitary Act, 1866, the provision of a place for holding post-mortem examination was entirely at the option of the sanitary authority. If the county council require the provision of such a place, this section makes the duty of the sanitary authority to provide it imperative. As to neglect of duty by the sanitary authority, see ss. 100 and 101.

The county council cannot require under this Act the commissioners of sewers to provide and maintain a building for post-mortem examinations; s. 133 (*c*).

Sanitary authorities may combine for the purpose of providing places for post-mortem examinations; s. 91, *infra*.

By s. 24 of the Coroners Act, 1887 (50 & 51 Vict. c. 71), "Where a place has been provided by a sanitary authority or nuisance authority for the reception of dead bodies during the time required to conduct a post-mortem examination, the coroner may order the removal of a dead body to and from such place for carrying out such examination, and the cost of such removal shall be deemed to be part of the expenses incurred in and about the holding of an inquest."

As to the power of a coroner to order the removal of a dead body to a mortuary for the reception of unidentified bodies, *see* s. 93, *infra*.

54 & 55 Vict. c. 76.

Power to sanitary authorities to unite for providing mortuary.

91. Any sanitary authorities may, with the approval of the county council, execute their duty under this Act with respect to mortuaries and buildings for post-mortem examinations by combining for the purpose thereof, or by contracting for the use by one of the contracting authorities of any such mortuary or building provided by another of such contracting authorities, and may so combine or contract upon such terms as may be agreed upon.

The Local Government Board may combine sanitary authorities for the purpose of epidemic regulations under s. 84 of this Act.

Under this section the combining authorities will require the approval of the county council.

Place for holding inquests.

92. The county council shall provide and maintain proper accommodation for the holding of inquests, and may by agreement with a sanitary authority provide and maintain the same in connection with a mortuary or a building for post-mortem examinations provided by that authority, or with any building belonging to that authority, and may do so on such terms as may be agreed on with the authority.

The duty of the county council under this section is imperative.

As to the provision of mortuaries, see s. 88, *supra*, p. 306; and of places for post-mortem examinations, s. 90, *supra*.

As to provision by the county council of mortuaries for unidentified bodies, see s. 93, *infra*.

Mortuary for unidentified bodies.

93.—(1.) The county council may provide and fit up in London one or two suitable buildings to which dead bodies found in London and not identified, together with any clothing, articles, and other things found with or on such dead bodies, may on the order of a coroner be removed, and in which they may be retained and

preserved with a view to the ultimate identification of such dead bodies. 54 & 55 Vict. c. 76.

(2.) A secretary of state may make regulations as to—

(*a.*) the manner in which and conditions subject to which any such bodies shall be removed to any such building, and the payments to be made at such building to persons bringing any unidentified dead body for reception; and

(*b.*) the fees and charges to be paid upon the removal or interment of any such dead body which has been identified after its reception, and the persons by whom such fees and payments are to be made, and the manner and method of recovering the same; and

(*c.*) the disposal and interment of any such bodies.

(3.) The county council may provide at the said buildings all such appliances as they think expedient for the reception and preservation of bodies, and may make regulations (subject to the provisions aforesaid) as to the management of the said buildings and the bodies therein, and as to the conduct of persons employed therein or resorting thereto for the purpose of identifying any body.

(4.) Subject to and in accordance with such regulations as may be made by a secretary of state, any such body found in London may (on the order in writing of a coroner holding or having jurisdiction to hold the inquest on the same) be removed to any building provided under this section, and subject as aforesaid the inquest on any such body shall be held by the same coroner and in the same manner as if the said building were within the district of such coroner.

54 & 55 Vict. c. 76.

This section reproduces s. 22 of the London Council General Powers Act, 1890 (53 & 54 Vict. c. ccxliii.).

As to the provision by the county council of places for holding inquests, see s. 92, *supra*.

By s. 18 of the Coroners Act, 1887 (50 & 51 Vict. c. 71), "except upon holding an inquest, no order, warrant, or other document for the burial of a body, shall be given by the coroner."

As to the power of a coroner to order removal of a body for the purpose of post-mortem examination, see note to s. 90, *supra*.

* * * * * *

Authorities for Execution of Act.

Definition of sanitary authority. 18 & 19 Vict. c. 120. 48 & 49 Vict. c. 33. 50 & 51 Vict. c. 17.

99.—(1.) Subject to the provisions of this Act, the sanitary authority for the execution of this Act (in this Act referred to as "the sanitary authority") shall be as follows; (namely,)

(*a.*) in the City of London the commissioners of sewers; and

(*b.*) in each of the parishes mentioned in Schedule (A.) to the Metropolis Management Act, 1855, as amended by the Metropolis Management Amendment Act, 1885, and the Metropolis Management (Battersea and Westminster) Act, 1887, other than Woolwich, the vestry of the parish; and

(*c.*) in each of the districts mentioned in Schedule (B.) to the same Act, as so amended, the district board for the district; and

(*d.*) in the parish of Woolwich, the local board of health; and

(*e.*) in any place mentioned in Schedule (C.) to the Metropolis Management Act, 1855, the board of guardians for such place or for any parish

or poor law union of which it forms part, or, if there is no such board of guardians, the overseers of the poor for such place, or for the parish in which it is situate, and the said guardians and overseers respectively shall have the same powers for the purposes of this Act as a vestry or district board have under this Act, and their expenses shall be defrayed in the same manner as the expenses of the execution of the Acts relating to the relief of the poor are defrayed in the said place. 54 & 55 Vict. c. 76.

(2.) The area within which this Act is executed by any sanitary authority is in this Act referred to as the district of that authority.

(3.) The purposes for which a committee of a vestry or district board may be appointed under the Metropolis Management Act, 1855, and the Acts amending the same, shall include the purposes of this Act, and the provisions of those Acts with respect to committees shall apply accordingly.

(4.) Where a sanitary authority appoint a committee for the purposes of this Act, that committee, subject to the terms of their appointment, may serve and receive notices, take proceedings, and empower any officer of the authority to make complaints and take proceedings in their behalf, and otherwise to execute this Act.

(5.) A sanitary authority may acquire and hold land for the purposes of their duties without any license in mortmain.

In case of default of a sanitary authority in doing its duty, the Local Government Board may appoint the county council to perform its duty, and under such appointment the county council will have all the powers of a sanitary authority; s. 101.

The Act extends only to London, s. 132, and London means the administrative county of London, s. 141.

54 & 55 Vict. c. 76.

Under the Public Health Act, 1848 (11 & 12 Vict. c. 63), Woolwich was a district governed by a local board of health. As to the extent to which the Metropolis Management Act, 1855, affected Woolwich, see s. 238 of that Act.

The purposes for which a committee of a vestry or district board can be appointed under the Metropolis Management Act, 1855, are defined by s. 58 of that Act, and their powers prescribed by s. 59.

As to the serving and authentication of notices under this Act, see ss. 127 and 128.

Legal proceedings are regulated by s. 117, *infra*.

The sanitary authority may enter and examine premises, &c., by any officers or persons appointed by them; s. 115 (1).

The sanitary authority may appear before any court, or in any legal proceeding, by their clerk or by any officer or member authorised by resolution of the authority; s. 123.

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Expenses of execution of Act.

103. The expenses incurred by sanitary authorities in London under this Act shall, save as otherwise in this Act mentioned, be defrayed as follows; (namely,)

In the case of the commissioners of sewers, out of their sewer rate and consolidated rate, or either of such rates:

In the case of any vestry or district board, out of their general rate:

In the case of the local board of health of Woolwich, out of the district fund or general district rate.

* * * * * *

Power of vestries and district boards to borrow.

105.—(1.) The provision of hospitals and of mortuaries under this Act, and the purposes of the epidemic regulations under this Act, shall be purposes for which vestries and district boards are authorised to borrow.

(2.) A sanitary authority, with the consent of the Local Government Board, may borrow for the purpose of providing, as required or authorised by this Act—

(*a.*) sanitary conveniences, lavatories, and ash-pits, and 54 & 55 Vict. c. 76.

(*b.*) premises, apparatus, carriages, and vessels for the disinfection, destruction, and removal of infected articles, and

(*c.*) a building for post-mortem examinations and accommodation for the holding of inquests.

(3.) The purposes for which a sanitary authority are authorised under this Act to borrow shall be purposes for which that authority may borrow under the Acts relating to the execution of the other duties of that authority, and, where the consent of the Local Government Board is required and given to any such loan, the consent of any other authority shall not be required.

* * * * * *

Penalty on obstructing execution of Act.

116.—(1.) If any person—

(*a.*) wilfully obstructs any member or officer of a sanitary authority or any person duly employed in the execution of this Act, or

(*b.*) destroys, pulls down, injures, or defaces any bye-law, notice, or other matter put up by authority of the Local Government Board or county council, or of a sanitary authority, or any board or other thing upon which such bye-law, notice, or matter is placed or inscribed, or

(*c.*) wilfully damages any works or property belonging to any sanitary authority,

he shall be liable to a fine not exceeding five pounds.

(2.) Where the occupier of any premises prevents the owner thereof from obeying or carrying into effect any provision of this Act, a petty sessional court, on complaint, shall by order require such occupier to permit the execution of any works which appear to the court necessary for the purpose of obeying or carrying into

54 & 55 Vict. c. 76.

effect such provision of this Act; and if within twenty-four hours after service on him of the order such occupier fails to comply therewith, he shall be liable to a fine not exceeding five pounds for every day during the continuance of such non-compliance.

(3.) If the occupier of any premises, when requested by or on behalf of the sanitary authority to state the name and address of the owner of the premises, refuses or wilfully omits to disclose or wilfully mis-states the same, he shall (unless he shows cause to the satisfaction of the court for his refusal) be liable to a fine not exceeding five pounds.

Summary proceedings for offences, expenses, &c.

117.—(1.) All offences, fines, penalties, forfeitures, costs, and expenses under this Act or any bye-law made under this Act directed to be prosecuted or recovered in a summary manner, or the prosecution or recovery of which is not otherwise provided for, may be prosecuted and recovered in manner directed by the Summary Jurisdiction Acts.

(2.) Proceedings for the recovery of a demand not exceeding fifty pounds, which a sanitary authority or any person are or is empowered to recover in a summary manner, may, at the option of the authority or person, be taken in the county court as if such demand were a debt.

(3.) A proceeding under this Act shall not be taken by the county council against a sanitary authority save with the sanction of the Local Government Board, unless such proceeding is for the recovery of expenses or of money due from the sanitary authority to the council.

Evidence by defendant.

118. Any person charged with an offence under this Act, and the wife or husband of such person, may, if such person thinks fit, be called, sworn, examined,

and cross-examined as an ordinary witness in the case. 54 & 55 Vict. c. 76.

119.—(1.) All fines recovered under this Act shall, notwithstanding anything in any other Act, be paid to the sanitary authority and applied by them in aid of their expenses in the execution of this Act, except that any fine imposed on the sanitary authority shall be paid to the county council. Application of fines and disposal of things forfeited.

(2.) All things forfeited under this Act may be sold or disposed of in such manner as the court ordering the forfeiture may direct.

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THE LOCAL GOVERNMENT ACT, 1894.

56 & 57 VICT. C. 73.

56 & 57 Vict. c. 73.

An Act to make further provision for Local Government in England and Wales. [5th March, 1894.]

BE it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

PART I.

Part I.

PARISH MEETINGS AND PARISH COUNCILS.

Constitution of Parish Meetings and Parish Councils.

1.—(1.) There shall be a parish meeting for every rural parish, and there shall be a parish council for every rural parish which has a population of three hundred or upwards: Provided that an order of the county council in pursuance of Part III. of this Act— Constitution of parish meetings and establishment parish councils.

56 & 57 Vict. c. 73. Part I.

(*a.*) shall, if the parish meeting of a rural parish having a population of one hundred or upwards so resolve, provide for establishing a parish council in the parish, and may, with the consent of the parish meeting of any rural parish having a population of less than one hundred, provide for establishing a parish council in the parish; and

(*b.*) may provide for grouping a parish with some neighbouring parish or parishes under a common parish council, but with a separate parish meeting for every parish so grouped, so, however, that no parish shall be grouped without the consent of the parish meeting for that parish.

(2.) For the purposes of this Act every parish in a rural sanitary district shall be a rural parish.

(3.) Where a parish is at the passing of this Act situate partly within and partly without a rural sanitary district, the part of the parish which is within the district, and the part which is without, shall as from the appointed day, but subject to any alteration of area made by or in pursuance of this or any other Act, be separate parishes, in like manner as if they had been constituted separate parishes under the Divided Parishes and Poor Law Amendment Act, 1876, and the Acts amending the same.

39 & 40 Vict. c. 61.

On the whole of this Act and its relation to the Burial Acts, see Introduction, *ante*, pp. 83–85, and the notes to s. 7, *infra*, p. 327.

Parish meetings.

2.—(1.) The parish meeting for a rural parish shall consist of the following persons, in this Act referred to as parochial electors, and no others, namely, the persons registered in such portion either of the local government

register of electors or of the parliamentary register of electors as relates to the parish.

(2.) Each parochial elector may, at any parish meeting, or at any poll consequent thereon, give one vote and no more on any question, or, in the case of an election, for each of any number of persons not exceeding the number to be elected.

(3.) The parish meeting shall assemble at least once in every year, and the proceedings of every parish meeting shall begin not earlier than six o'clock in the evening.

(4.) Subject to the provisions of this Act as to any particular person being the chairman of a parish meeting, the meeting may choose their own chairman.

(5.) A poll consequent on a parish meeting shall be taken by ballot.

(6.) The reasonable expenses of and incidental to the holding of a parish meeting or the taking of a poll consequent thereon shall be defrayed as hereinafter provided.

(7.) With respect to parish meetings the provisions in the First Schedule to this Act shall have effect.

Constitution of parish council.

3.—(1.) The parish council for a rural parish shall be elected from among the parochial electors of that parish or persons who have during the whole of the twelve months preceding the election resided in the parish, or within three miles thereof, and shall consist of a chairman and councillors, and the number of councillors shall be such as may be fixed from time to time by the county council, not being less than five nor more than fifteen.

(2.) No person shall be disqualified by sex or marriage for being elected or being a member of a parish council.

56 & 57 Vict. c. 73. Part I.

(3.) The term of office of a parish councillor shall be one year.

(4.) On the fifteenth day of April in each year (in this Act referred to as the ordinary day of coming into office of councillors) the parish councillors shall go out of office, and their places shall be filled by the newly-elected councillors.

(5.) The parish councillors shall be elected by the parochial electors of the parish.

(6.) The election of parish councillors shall, subject to the provisions of this Act, be conducted according to rules framed under this Act for that purpose by the Local Government Board.

(7.) The parish council shall in every year, on or within seven days after the ordinary day of coming into office of councillors, hold an annual meeting.

(8.) At the annual meeting, the parish council shall elect, from their own body or from other persons qualified to be councillors of the parish, a chairman, who shall, unless he resigns, or ceases to be qualified, or becomes disqualified, continue in office until his successor is elected.

(9.) Every parish council shall be a body corporate by the name of the parish council, with the addition of the name of the parish, or if there is any doubt as to the latter name, of such name as the county council after consultation with the parish meeting of the parish direct, and shall have perpetual succession, and may hold land for the purposes of their powers and duties without license in mortmain; and any act of the council may be signified by an instrument executed at a meeting of the council, and under the hands or, if an instrument under seal is required, under the hands and seals, of the chairman presiding at the meeting and two other members of the council.

(10.) With respect to meetings of parish councils the

provisions in the First Schedule to this Act shall have effect. 56 & 57 Vict. c. 73. Part I.

By 60 & 61 Vict. c. 1, any person who has entered into residence on or before the 25th March in any year shall, if otherwise qualified for election as a parish councillor, be eligible for election at the parish council elections of the succeeding year notwithstanding that the period of his residence shall be under one year.

Use of school-room.

4.—(1.) In any rural parish in which there is no suitable public room vested in the parish council or in the chairman of a parish meeting and the overseers which can be used free of charge for the purposes in this section mentioned, the parochial electors and the parish council shall be entitled to use, free of charge, at all reasonable times, and after reasonable notice, for the purpose of—

(*a.*) the parish meeting or any meeting of the parish council; or

(*b.*) any inquiry for parochial purposes by the Local Government Board or any other Government department or local authority; or

(*c.*) holding meetings convened by the chairman of the parish meeting or by the parish council, or if as to allotments in the manner prescribed by the Allotments Act, 1890, or otherwise as the Local Government Board may by rule prescribe, to discuss any question relating to allotments, under the Allotments Acts, 1887 and 1890, or under this Act; or 53 & 54 Vict. c. 65.

(*d.*) the candidature of any person for the district council or the parish council; or

(*e.*) any committee or officer appointed, either by the parish meeting or council or by a county or district council, to administer public funds within or for the purposes of the parish,

any suitable room in the school-house of any public ele-

56 & 57 Vict. c. 73. Part I.

mentary school receiving a grant out of monies provided by Parliament, and any suitable room the expense of maintaining which is payable out of any local rate:

Provided that this enactment shall not authorise the use of any room used as part of a private dwelling-house, nor authorise any interference with the school hours of an elementary day or evening school, nor, in the case of a room used for the administration of justice or police, with the hours during which it is used for these purposes.

(2.) If, by reason of the use of the room for any of the said purposes, any expense is incurred by the persons having control over the room, or any damage is done to the room or to the building of which the room is part or its appurtenances, or the furniture of the room or the apparatus for instruction, the expense or damage shall be defrayed as part of the expenses of the parish meeting or parish council or inquiry as the case may be; but when the meeting is called for the purpose of the candidature of any person, such expense or damage shall be reimbursed to the parish meeting or the parish council by the persons by whom or on whose behalf the meeting is convened.

(3.) If any question arises under this section as to what is reasonable or suitable, it may be determined, in the case of a school-house by the Education Department, in the case of a room used for the administration of justice or police by a secretary of state, and in any other case by the Local Government Board.

Powers and Duties of Parish Councils and Parish Meetings.

Parish council to appoint overseers.

5.—(1.) The power and duty of appointing overseers of the poor, and the power of appointing and revoking the appointment of an assistant overseer, for every rural

parish having a parish council, shall be transferred to and vested in the parish council, and that council shall in each year, at their annual meeting, appoint the overseers of the parish, and shall as soon as may be fill any casual vacancy occurring in the office of overseer of the parish, and shall in either case forthwith give written notice thereof in the prescribed form to the board of guardians.

(2.) As from the appointed day—

(*a.*) the churchwardens of every rural parish shall cease to be overseers, and an additional number of overseers may be appointed to replace the churchwardens, and

(*b.*) references in any Act to the churchwardens and overseers shall, as respects any rural parish, except so far as those references relate to the affairs of the church, be construed as references to the overseers, and

(*c.*) the legal interest in all property vested either in the overseers or in the churchwardens and overseers of a rural parish, other than property connected with the affairs of the church, or held for an ecclesiastical charity, shall, if there is a parish council, vest in that council, subject to all trusts and liabilities affecting the same, and all persons concerned shall make or concur in making such transfers, if any, as are requisite for giving effect to this enactment.

Transfer of certain powers of vestry and other authorities to parish council.

6.—(1.) Upon the parish council of a rural parish coming into office, there shall be transferred to that council:—

(*a.*) The powers, duties, and liabilities of the vestry of the parish except—

(i.) so far as relates to the affairs of the church or to ecclesiastical charities; and

56 & 57 Vict. c. 73. Part I.

(ii.) any power, duty, or liability transferred by this Act from the vestry to any other authority:

(*b.*) The powers, duties, and liabilities of the churchwardens of the parish, except so far as they relate to the affairs of the church or to charities, or are powers and duties of overseers, but inclusive of the obligations of the churchwardens with respect to maintaining and repairing closed churchyards wherever the expenses of such maintenance and repair are repayable out of the poor rate under the Burial Act, 1855: Provided that such obligations shall not in the case of any particular parish be deemed to attach, unless or until the churchwardens subsequently to the passing of this Act shall give a certificate, as in the Burial Act, 1855, provided, in order to obtain the repayment of such expenses out of the poor rate.

18 & 19 Vict. c. 128.

(*c.*) The powers, duties, and liabilities of the overseers or of the churchwardens and overseers of the parish with respect to—

(i.) appeals or objections by them in respect of the valuation list, or appeals in respect of the poor rate, or county rate, or the basis of the county rate; and

(ii.) the provision of parish books and of a vestry room or parochial office, parish chest, fire engine, fire escape, or matters relating thereto; and

(iii.) the holding or management of parish property, not being property relating to affairs of the church or held for an ecclesiastical charity, and the holding or

management of village greens, or of allotments, whether for recreation grounds or for gardens or otherwise for the benefit of the inhabitants or any of them;

(*d.*) The powers exercisable with the approval of the Local Government Board by the board of guardians for the poor law union comprising the parish in respect of the sale, exchange, or letting of any parish property.

* * * * * *

See notes to the next section.

"Affairs of the Church" and "ecclesiastical charities" are defined by s. 75, *infra*, p. 375.

Sub-s. 1, sub-s. (*c*) (ii), does not affect 52 Geo. III. c. 146, s. 5, *post*, p. 436. By s. 17, sub-s. 8, *infra*, p. 341, the custody of the registers of burials is to remain as provided by the existing laws unaffected by this Act.

The section of the Burial Act, 1855, referred to in sub-s. 1 (*b*), is s. 18, *ante*, p. 185 (see notes to that section). It will be noticed that the transfer of powers, &c., will not take place till the churchwardens give their certificate. Therefore, if the repair and maintenance be paid for voluntarily, the churchwardens will be able to retain the care of the churchyard and prevent any interference with it by the parish council.

Transfer of powers under adoptive Acts.

7.—(1.) As from the appointed day, in every rural parish the parish meeting shall, exclusively, have the power of adopting any of the following Acts, inclusive of any Acts amending the same (all which Acts are in this Act referred to as "the adoptive Acts"); namely;—

(*a.*) The Lighting and Watching Act, 1833; 3 & 4 Will. IV. c. 90. 9 & 10 Vict. c. 74.

(*b.*) The Baths and Washhouses Acts, 1846 to 1882; 45 & 46 Vict. c. 30. 15 & 16 Vict. c. 85.

(*c.*) The Burial Acts, 1852 to 1885; 48 & 49 Vict. c. 21.

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(*d.*) The Public Improvements Act, 1860;

(*e.*) The Public Libraries Act, 1892.

23 & 24 Vict. c. 30. 55 & 56 Vict. c. 53.

(2.) Where under any of the said Acts a particular majority is required for the adoption or abandonment of the Act, or for any matter under such Act, the like majority of the parish meeting or, if a poll is taken, of the parochial electors, shall be required, and where under any of the said Acts the opinion of the voters is to be ascertained by voting papers, the opinion of the parochial electors shall be ascertained by a poll taken in manner provided by this Act.

(3.) Where under any of the said Acts the consent or approval of, or other act on the part of, the vestry of a rural parish is required in relation to any expense or rate, the parish meeting shall be substituted for the vestry, and for this purpose the expression "vestry" shall include any meeting of ratepayers or voters.

(4.) Where there is power to adopt any of the adoptive Acts for a part only of a rural parish, the Act may be adopted by a parish meeting held for that part.

(5.) Where the area under any existing authority acting within a rural parish in the execution of any of the adoptive Acts is co-extensive with the parish, all powers, duties, and liabilities of that authority shall, on the parish council coming into office, be transferred to that council.

(6.) This Act shall not alter the incidence of charge of any rate levied to defray expenses incurred under any of the adoptive Acts, and any such rate shall be made and charged as heretofore, and any property applicable to the payment of such expenses shall continue to be so applicable.

(7.) When any of the adoptive Acts is adopted for the whole or part of a rural parish after the appointed

day, and the parish has a parish council, the parish council shall be the authority for the execution of the Act.

(8.) For the purposes of this Act the passing of a resolution to provide a burial ground under the Burial Acts, 1852 to 1885, shall be deemed an adoption of those Acts.

By sub-s. 3 of this section the consent of the parish meeting is substituted for the consent of the vestry in incurring expenses. By 18 & 19 Vict. c. 128, s. 6, *ante*, p. 171, where the vestry refused or neglected to consent to certain expenses the vestry could represent such refusal or neglect to a secretary of state, and after inquiry the latter might authorise such expenditure by warrant. Apparently the parish council will be able to appeal to the secretary of state in the same circumstances.

This section contains provisions for the adoption of the Burial Acts, and for the transfer of the powers, &c., of existing burial boards in parishes where both a parish council and a parish meeting occur. The effect of this Act on existing authorities for the execution of the Burial Acts, and its provisions for their future adoption, are briefly as follows:

Existing Burial Boards.—Where a burial board is in existence for an area coincident with a rural parish, which possesses a parish council, the powers, duties, and liabilities are by sub-s. 5 of this section transferred to the parish council, and the latter is the authority for the execution of the Burial Acts. By s. 56, sub-s. 1, *infra*, p. 366, the council may appoint a committee consisting either wholly or partly of members of the council for the exercise of any powers which, in the opinion of the council, can be properly exercised by committees, and, therefore, the council may delegate its powers under the Burial Acts to a committee.

Where a burial board has been created for part only of a rural parish possessing a council, then under s. 53, sub-s. 1, the powers of the board may, but need not, be transferred to the council. If this is not done, the burial board will continue for its former area, and will be elected by the vestry, or meeting in the nature of a vestry, for that part of the parish. For the

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cases in which a burial board might be elected for part of a parish under the Burial Acts, see 18 & 19 Vict. c. 128, s. 12, *ante*, p. 178, and 20 & 21 Vict. c. 81, s. 5, *ante*, p. 203, and notes thereto.

If there be a burial board for a rural parish possessing a meeting but no council, then under sub-ss. 2 and 3 of this section, and s. 19, *infra*, p. 342, the parish meeting will have the powers of the vestry, and will elect a burial board. Whether under s. 19, sub-s. 10, *infra*, p. 343, the county council have the power to transfer the powers, duties, and liabilities of an existing burial board to the parish meeting is open to question. The better opinion would seem to be that the county council cannot do so (see Jenkin's Local Government Act, 1894, p. 83). If, however, under s. 1, sub-s. 2, the county council make an order grouping the parish with other parishes under a common council with separate parish meetings, such council will become the authority for the execution of the Burial Acts, and the meetings together will exercise the authority formerly exercised by the vestries under the Burial Acts.

Where the area of an existing burial board is partly within and partly without a rural parish, then by s. 53, sub-s. 2, *infra*, p. 362, the powers, &c. of the board are transferred to the parish councils of the rural parishes wholly or partly comprised in that area, or if the area is partly comprised in an urban district, to those parish councils and the district council of the urban district, and shall, until other provision is made in pursuance of this Act, be exercised by a joint committee appointed by those councils. Where the rural parish has not a parish council, the parish meeting is substituted for the parish council. Apparently, a joint committee so appointed are subject to the same extent as their predecessors to the control of the vestry or meeting in the nature of a vestry for the area.

The case of an area which is part of a rural parish without a council, and possesses a burial board, is never likely to be found.

Where there is a burial board in an urban district, or part of an urban district, by s. 62, sub-s. 1, *infra*, p. 369, the council of that district may resolve that the powers, &c. of the board shall be transferred to the council.

Adoption of the Burial Acts.—In a rural parish possessing both a meeting and a council, by sub-s. 1 of this section the parish meeting has the exclusive power of adopting the Burial Acts for the whole of the parish, and by sub-s. 7 the parish council will be the authority for executing them. The council may appoint a committee under s. 56, sub-s. 1, as previously pointed out. If it be desired to adopt the Acts for part only of a parish possessing a council (the Burial Acts being among the adoptive Acts applicable to part only of a rural parish, see 20 & 21 Vict. c. 81, s. 5, *ante*, p. 203), then they may by sub-s. 4 be adopted by a parish meeting for that part, but the parish council will be the authority for their execution.

If a parish possess a meeting but no council, the meeting, or in the unlikely event of an adoption of the Acts for a part only of such parish, the meeting for that part has the power of adoption. The authority for the execution of the Acts will be a burial board elected by the meeting under the powers transferred to it from the vestry by sub-ss. 2 and 3 of this section and s. 19. By s. 19, sub-s. 10, the county council may confer the powers of a burial board to the parish meeting and remove the necessity for the election of a board. The difficulties pointed out above as to the transfer of the powers of an existing burial board to a parish meeting do not arise in the case of the adoption of the Burial Acts.

There is no provision in the Local Government Act, 1894, for the adoption of the Burial Acts for any area not contained in one rural parish, and in future no board can be appointed for such an area.

By s. 62, sub-s. 2, after this Act comes into operation the Burial Acts shall not be adopted for any part of an urban district without the approval of the council of that district.

It appears to be doubtful whether sub-s. 2 of this section applies where the Acts have been, or are proposed to be, adopted for part only of a rural parish.

The combined effect of this section and s. 6, sub-s. 1, *supra*, would seem to be this. By the latter section the powers, duties, and liabilities of the vestry of a parish are transferred to the parish council except, (i) so far as relates to the affairs of the Church or ecclesiastical charities; (ii) any power, &c. transferred by this Act from the vestry to any

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other authority. Certain powers of the vestry under the Burial Acts are transferred by this present section to the meeting and not to the council, and come under the latter of the exceptions in s. 6, sub-s. 1. Those powers include the adoption of the Burial Acts (sub-s. 1) and the consent, &c. in relation to any expense or rate (sub-s. 3). The provisions as to the adoption of the Burial Acts were previously contained in 15 & 16 Vict. c. 85, s. 10, *ante*, p. 101, and 18 & 19 Vict. c. 128, s. 3, *ante*, p. 169; as to the consent, &c. of the vestry in relation to an expense or rate, see 15 & 16 Vict. c. 85, s. 19, *ante*, p. 110, s. 15, *ante*, p. 108, s. 20, *ante*, p. 111, s. 26, *ante*, p. 117, s. 28, *ante*, p. 118, s. 29, *ante*, p. 119, s. 42, *ante*, p. 132, s. 51, *ante*, p. 141, and 20 & 21 Vict. c. 81, s. 26, *ante*, p. 224. The rules above laid down as to the distribution of the powers and duties of the burial boards between the parish council and meeting will apply to these sections—that is, if the powers, &c., concern an expense or rate, the consent of the parish meeting will be required, but if not, the parish council will take over the powers thereby given under s. 6, sub-s. 1.

The effect of this Act on ss. 33 and 34, *ante*, pp. 125 to 128, of 15 & 16 Vict. c. 85, is a debatable question. Those sections provide for fixing, with the consent of the vestry, fees payable to incumbents. It is doubtful whether the consent of the vestry in such a matter is still left to it under s. 6, sub-s. 1 (a) (i), which excepts from powers transferred under this Act any powers relating to the affairs of the Church, or whether the consent of the parish meeting is substituted under sub-s. 3 of the present section. It would seem that the former alternative is correct, for the amount of fees payable to the incumbent for burial could not make any difference to the rates and expenses of a parish, the expense falling solely on those paying for burial. It may also be observed that only in exceptional cases are fees payable at law to the council for handing over to the incumbent.

As far as any of the sections of the Burial Act mentioned above deal with borrowing powers, see s. 12, sub-s. 3, *infra*, of this Act, which provides that a parish council shall not borrow for any of the purposes of the adoptive Acts otherwise than in accordance with this Act.

For the passing of a resolution to provide a burial ground for a whole parish as mentioned in sub-s. 8, see 15 & 16 Vict.

c. 85, s. 10, *ante*, p. 101, and 18 & 19 Vict. c. 128, s. 3, *ante*, p. 169. For other enactments as to providing a burial ground for part of a parish, see 18 & 19 Vict. c. 128, s. 12, *ante*, p. 178, and 20 & 21 Vict. c. 81, s. 5, *ante*, p. 203, and notes thereto. In the latter case the consent of a secretary of state is necessary, and such consent will still be necessary under this Act. As to the mode of obtaining the approval, see 34 & 35 Vict. c. 33, *ante*, p. 236.

Additional powers of parish council.

8.—(1.) A parish council shall have the following additional powers, namely, power—

(*a.*) to provide or acquire buildings for public offices and for meetings and for any purposes connected with parish business or with the powers or duties of the parish council or parish meeting; and

(*b.*) to provide or acquire land for such buildings and for a recreation ground and for public walks; and

* * * * * *

(*d.*) to exercise with respect to any recreation ground, village green, open space, or public walk, which is for the time being under their control, or to the expense of which they have contributed, such powers as may be exercised by an urban authority under section one hundred and sixty-four of the Public Health Act, 1875, or section forty-four of the Public Health Acts Amendment Act, 1890, in relation to recreation grounds or public walks, and sections one hundred and eighty-three to one hundred and eighty-six of the Public Health Act, 1875, shall apply accordingly as if the parish council were a local authority within the meaning of those sections; and

38 & 39 Vict. c. 55. 53 & 54 Vict. c. 59.

* * * * * *

(*h.*) to accept and hold any gifts of property, real or personal, for the benefit of the inhabitants of the parish or any part thereof; and

(*i.*) to execute any works (including works of maintenance or improvement) incidental to or consequential on the exercise of any of the foregoing powers, or in relation to any parish property, not being property relating to affairs of the church or held for an ecclesiastical charity; and

(*k.*) to contribute towards the expense of doing any of the things above mentioned, or to agree or combine with any other parish council to do or contribute towards the expense of doing any of the things above mentioned.

(2.) A parish council may let, or, with the consent of the parish meeting, sell or exchange, any land or buildings vested in the council, but the power of letting for more than a year and the power of sale or exchange shall not be exercised, in the case of property which has been acquired at the expense of any rate, or is at the passing of this Act applied in aid of any rate, or would but for want of income be so applied, without the consent of the Local Government Board, or in any other case without such consent or approval as is required under the Charitable Trusts Acts, 1853 to 1891, for the sale of charity estates, provided that the consent or approval required under those Acts shall not be required for the letting for allotments of land vested in the parish council.

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Powers for acquisition of land.

9.—(1.) For the purpose of the acquisition of land by a parish council the Lands Clauses Acts shall be incorporated with this Act, except the provisions of

those Acts with respect to the purchase and taking of land otherwise than by agreement, and section one hundred and seventy-eight of the Public Health Act, 1875, shall apply as if the parish council were referred to therein. 56 & 57 Vict. c. 73. Part I.

(2.) If a parish council are unable to acquire by agreement and on reasonable terms suitable land for any purpose for which they are authorised to acquire it, they may represent the case to the county council, and the county council shall inquire into the representation.

(3.) If on any such representation, or on any proceeding under the Allotments Acts, 1887 and 1890, a county council are satisfied that suitable land for the said purpose of the parish council or for the purpose of allotments (as the case may be), cannot be acquired on reasonable terms by voluntary agreement, and that the circumstances are such as to justify the county council in proceeding under this section, they shall cause such public inquiry to be made in the parish, and such notice to be given both in the parish and to the owners, lessees, and occupiers of the land proposed to be taken as may be prescribed, and all persons interested shall be permitted to attend at the inquiry, and to support or oppose the taking of the land. 50 & 51 Vict. c. 48. 53 & 54 Vict. c. 65.

(4.) After the completion of the inquiry, and considering all objections made by any persons interested, the county council may make an order for putting in force, as respects the said land or any part thereof, the provisions of the Lands Clauses Acts with respect to the purchase and taking of land otherwise than by agreement.

(5.) If the county council refuse to make any such order, the parish council, or, if the proceeding is taken

56 & 57 Vict. c. 73. Part I.

on the petition of the district council, then the district council, may petition the Local Government Board, and that Board after local inquiry may, if they think proper, make the order, and this section shall apply as if the order had been made by the county council. Any order made under this sub-section overruling the decision of the county council shall be laid before Parliament by the Local Government Board.

(6.) A copy of any order made under this section shall be served in the prescribed manner, together with a statement that the order will become final and have the effect of an Act of Parliament, unless within the prescribed period a memorial by some person interested is presented to the Local Government Board praying that the order shall not become law without further inquiry.

(7.) The order shall be deposited with the Local Government Board, who shall inquire whether the provisions of this section and the prescribed regulations have been in all respects complied with; and if the Board are satisfied that this has been done, then, after the prescribed period—

(*a.*) If no memorial has been presented, or if every such memorial has been withdrawn, the Board shall, without further inquiry, confirm the order:

(*b.*) If a memorial has been presented, the Local Government Board shall proceed to hold a local inquiry, and shall, after such inquiry, either confirm, with or without amendment, or disallow the order:

(*c.*) Upon any such confirmation the order, and if amended as so amended, shall become final and have the effect of an Act of Parliament,

and the confirmation by the Local Government Board shall be conclusive evidence that the requirements of this Act have been complied with, and that the order has been duly made, and is within the powers of this Act.

(8.) Sections two hundred and ninety-three to two hundred and ninety-six, and sub-sections (1) and (2) of section two hundred and ninety-seven of the Public Health Act, 1875, shall apply to a local inquiry held by the Local Government Board for the purposes of this section, as if those sections and sub-sections were herein re-enacted, and in terms made applicable to such inquiry.

(9.) The order shall be carried into effect, when made on the petition of a district council, by that council, and in any other case by the county council.

(10.) Any order made under this section for the purpose of the purchase of land otherwise than by agreement shall incorporate the Lands Clauses Acts and sections seventy-seven to eighty-five of the Railways Clauses Consolidation Act, 1845, with the necessary adaptations, but any question of disputed compensation shall be dealt with in the manner provided by section three of the Allotments Act, 1887, and provisoes (*a*), (*b*), and (*c*) of sub-section (4) of that section are incorporated with this section and shall apply accordingly: Provided that in determining the amount of disputed compensation, the arbitrator shall not make any additional allowance in respect of the purchase being compulsory.

8 & 9 Vict. c. 20.

(11.) At any inquiry or arbitration held under this section the person or persons holding the inquiry or arbitration shall hear any authorities or parties interested by themselves or their agents, and shall hear witnesses,

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but shall not, except in such cases as may be prescribed, hear counsel or expert witnesses.

(12.) The person or persons holding a public inquiry for the purposes of this section on behalf of a county council shall have the same powers as an inspector or inspectors of the Local Government Board when holding a local inquiry; and section two hundred and ninety-four of the Public Health Act, 1875, shall apply to the costs of inquiries held by the county council for the purpose of this section as if the county council were substituted for the Local Government Board.

(13.) Sub-section (2) of section two, if the land is taken for allotments, and, whether it is or is not so taken, sub-sections (5), (6), (7), and (8) of section three of the Allotments Act, 1887, and section eleven of that Act, and section three of the Allotments Act, 1890, are incorporated with this section, and shall, with the prescribed adaptations, apply accordingly.

50 & 51 Vict. c. 48. 53 & 54 Vict. c. 65.

(14.) Where the land is acquired otherwise than for allotments, it shall be assured to the parish council: . . .

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(18.) This section shall apply to a county borough with the necessary modifications, and in particular with the modification that the order shall be both made and confirmed by the Local Government Board and shall be carried into effect by the council of the county borough.

(19.) The expenses of a county council incurred under this section shall be defrayed in like manner as in the case of a local inquiry by a county council under this Act.

The powers of burial boards to acquire land are given by ss. 26 and 27 of 15 & 16 Vict. c. 85, *ante*, p. 117. Section 27 incorporated certain provisions of the Lands Clauses Consolidation

Act, 1845, with the Burial Acts, but excepted the provisions of that Act empowering compulsory purchase. Apparently, under this section, the parish council will, as the burial authority, be able to purchase land compulsorily, but the point is not entirely free from doubt.

If a loan be needed for the acquisition of land, the methods of borrowing are prescribed in s. 12, *infra*, p. 338.

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Restrictions on expenditure.

11.—(1.) A parish council shall not, without the consent of a parish meeting, incur expenses or liabilities which will involve a rate exceeding threepence in the pound for any local financial year, or which will involve a loan.

(2.) A parish council shall not, without the approval of the county council, incur any expense or liability which will involve a loan.

(3.) The sum raised in any local financial year by a parish council for their expenses (other than expenses under the adoptive Acts) shall not exceed a sum equal to a rate of sixpence in the pound on the rateable value of the parish at the commencement of the year, and for the purpose of this enactment the expression "expenses" includes any annual charge, whether of principal or interest, in respect of any loan.

(4.) Subject to the provisions of this Act, the expenses of a parish council and of a parish meeting, including the expenses of any poll, shall be paid out of the poor rate; and where there is a parish council that council shall pay the said expenses of the parish meeting of the parish; and the parish council, and where there is no parish council the chairman of the parish meeting, shall, for the purpose of obtaining payment of such expenses, have the same powers as a board of guardians have for the purpose of obtaining contributions to their common fund.

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(5.) The demand note for any rate levied for defraying the expenses of a parish council or a parish meeting, together with other expenses, shall state in the prescribed form the proportion of the rate levied for the expenses of the council or meeting, and the proportion (if any) levied for the purpose of any of the adoptive Acts.

Sub-s. 3 of this section excludes the expenses of the adoptive Acts; s. 19, sub-s. 9, *infra*, limits to 6*d.* in the pound in the financial year the rate levied for defraying the expenses of the parish meeting, when added to expenses under the adoptive Acts.

By s. 7, sub-s. 6, *supra*, p. 326, the incidence of the rate for the Burial Acts is not to be altered, and shall be made and charged as heretofore.

Borrowing by parish council.

12.—(1.) A parish council for any of the following purposes, that is to say—

(*a.*) for purchasing any land, or building any buildings, which the council are authorised to purchase or build; and

(*b.*) for any purpose for which the council are authorised to borrow under any of the adoptive Acts; and

(*c.*) for any permanent work or other thing which the council are authorised to execute or do, and the cost of which ought, in the opinion of the county council and the Local Government Board, to be spread over a term of years;

may, with the consent of the county council and the Local Government Board, borrow money in like manner and subject to the like conditions as a local authority may borrow for defraying expenses incurred in the execution of the Public Health Acts, and sections two hundred and thirty-three, two hundred and thirty-four, and two hundred and thirty-six to two hundred and thirty-nine of the Public Health Act, 1875, shall

38 & 39 Vict. c. 55.

apply accordingly, except that the money shall be borrowed on the security of the poor rate and of the whole or part of the revenues of the parish council, and except that as respects the limit of the sum to be borrowed, one half of the assessable value shall be substituted for the assessable value for two years.

(2.) A county council may lend to a parish council any money which the parish council are authorised to borrow, and may, if necessary, without the sanction of the Local Government Board, and irrespectively of any limit of borrowing, raise the money by loan, subject to the like conditions and in the like manner as any other loan for the execution of their duties, and subject to any further conditions which the Local Government Board may by general or special order impose.

(3.) A parish council shall not borrow for the purposes of any of the adoptive Acts otherwise than in accordance with this Act, but the charge for the purpose of any of the adoptive Acts shall ultimately be on the rate applicable to the purposes of that Act.

For the sections of the Public Health Act, 1875, see p. 686, *post*, where they are set out.

For the provisions of the Burial Acts as to the borrowing powers under the Burial Acts, see 15 & 16 Vict. c. 85, s. 20, *ante*, p. 111; 17 & 18 Vict. c. 87, ss. 4 and 5, *ante*, p. 161; 18 & 19 Vict. c. 128, s. 6, *ante*, p. 171; 20 & 21 Vict. c. 81, ss. 18–21, *ante*, pp. 217–219.

By sub-s. 3 of this section a parish council for the purposes of the Burial Acts shall not borrow otherwise than in accordance with this Act. Therefore so much of the Burial Acts as is incompatible with this Act is not applicable to cases where the parish council is the authority for the execution of those Acts. The rate applicable to the purposes of the Burial Acts is the poor rate.

By s. 11, sub-s. 2 of this Act, *supra*, p. 337, a parish council shall not, without the approval of the county council, incur any expense or liability which shall involve a loan.

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For the borrowing powers of a joint committee appointed under s. 53, see the Local Government (Joint Committees) Act, 1897, *infra*, p. 390.

By s. 7, sub-s. 3 of this Act, *ante*, p. 326, where under the Burial Acts the consent or approval of the vestry of a rural parish is required in relation to any expense or rate the parish meeting is substituted for the vestry. For the effect of that sub-section, combined with 18 & 19 Vict. c. 128, which gave the burial board a right to appeal to a secretary of state in certain cases, see the notes to s. 7, *ante*, p. 327.

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Public property and charities.

14.—(1.) Where trustees hold any property for the purposes of a public recreation ground or of public meetings, or of allotments, whether under Inclosure Acts or otherwise, for the benefit of the inhabitants of a rural parish, or any of them, or for any public purpose connected with a rural parish, except for an ecclesiastical charity, they may, with the approval of the Charity Commissioners, transfer the property to the parish council of the parish, or to persons appointed by that council, and the parish council, if they accept the transfer, or their appointees, shall hold the property on the trusts and subject to the conditions on which the trustees held the same.

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Parish officers and parish documents.

17.—(1.) A parish council may appoint one of their number to act as clerk of the council without remuneration.

(2.) If no member of the parish council is appointed so to act, and there is an assistant overseer, he, or such one of the assistant overseers, if more than one, as may be appointed by the council, shall be the clerk of the parish council, and the performance of his duties as such shall be taken into account in determining his salary.

(3.) If there is no assistant overseer, the parish council

may appoint a collector of poor rates, or some other fit person, to be their clerk, with such remuneration as they may think fit.

(4.) A parish council shall not appoint to the office of vestry clerk.

(5.) When a parish council act as a parochial committee by delegation from the district council they shall have the services of the clerk of the district council, unless the district council otherwise direct.

(6.) The parish council may appoint one of their own number or some other person to act as treasurer without remuneration, and the treasurer shall give such security as may be required by regulations of the county council.

(7.) All documents required by statute or by standing orders of Parliament to be deposited with the parish clerk of a rural parish shall, after the election of a parish council, be deposited with the clerk, or, if there is none, with the chairman, of the parish council, and the enactments with respect to the inspection of, and taking copies of, and extracts from, any such documents shall apply as if the clerk, or chairman, as the case may be, were mentioned therein.

(8.) The custody of the registers of baptisms, marriages, and burials, and of all other books and documents containing entries wholly or partly relating to the affairs of the Church or to ecclesiastical charities, except documents directed by law to be kept with the public books, writings, and papers of the parish, shall remain as provided by the existing law unaffected by this Act. All other public books, writings, and papers of the parish, and all documents directed by law to be kept therewith, shall either remain in their existing custody, or be deposited in such custody as the parish council may direct. The incumbent and churchwardens on the

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one part, and the parish council on the other, shall have reasonable access to all such books, documents, writings, and papers, as are referred to in this sub-section, and any difference as to custody or access shall be determined by the county council.

(9.) Every county council shall from time to time inquire into the manner in which the public books, writings, papers, and documents under the control of the parish council or parish meeting are kept with a view to the proper preservation thereof, and shall make such orders as they think necessary for such preservation, and those orders shall be complied with by the parish council or parish meeting.

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Provisions as to small parishes.

19. In a rural parish not having a separate parish council, the following provisions shall, as from the appointed day, but subject to provisions made by a grouping order, if the parish is grouped with some other parish or parishes, have effect:—

(1.) At the annual assembly the parish meeting shall choose a chairman for the year;

(2.) The parish meeting shall assemble not less than twice in each year;

(3.) The parish meeting may appoint a committee of their own number for any purposes which, in the opinion of the parish meeting, would be better regulated and managed by means of such a committee, and all the acts of the committee shall be submitted to the parish meeting for their approval:

(4.) All powers, duties, and liabilities of the vestry shall, except so far as they relate to the affairs of the Church or to ecclesiastical charities, or are transferred by this Act to any other authority, be transferred to the parish meeting;

(5.) The power and the duty of appointing the over-

seers, and of notifying the appointment, and the power of appointing and revoking the appointment of an assistant overseer, shall be transferred to and vest in the parish meeting, and the power given by this Act to a parish council of appointing trustees of a charity in the place of overseers or churchwardens, shall vest in the parish meeting;

(6.) The chairman of the parish meeting and the overseers of the parish shall be a body corporate by the name of the chairman and overseers of the parish, and shall have perpetual succession, and may hold land for the purposes of the parish without license in mortmain; but shall in all respects act in manner directed by the parish meeting, and any act of such body corporate shall be executed under the hands, or if an instrument under seal is required under the hands and seals, of the said chairman and overseers;

(7.) The legal interest in all property which under this Act would, if there were a parish council, be vested on the appointed day in the parish council shall vest in the said body corporate of the chairman and overseers of the parish, subject to all trusts and liabilities affecting the same, and all persons concerned shall make or concur in making such transfers (if any) as are requisite to give effect to this enactment;

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(9.) A rate levied for defraying the expenses of the parish meeting (when added to expenses under any of the adoptive Acts) shall not exceed sixpence in the pound in any local financial year;

(10.) On the application of the parish meeting the county council may confer on that meeting any of the powers conferred on a parish council by this Act;

56 & 57 Vict. c. 73. Part I.

(11.) Any act of the parish meeting may be signified by an instrument executed at the meeting under the hands, or, if an instrument under seal is required under the hands and seals, of the chairman presiding at the meeting and two other parochial electors present at the meeting.

Part II.

PART II.

GUARDIANS AND DISTRICT COUNCILS.

* * * * * *

Names of county districts and district councils.

21. As from the appointed day,—

(1.) Urban sanitary authorities shall be called urban district councils, and their districts shall be called urban districts; but nothing in this section shall alter the style or title of the corporation or council of a borough:

(2.) For every rural sanitary district there shall be a rural district council whose district shall be called a rural district:

(3.) In this and every other Act of Parliament, unless the context otherwise requires, the expression "district council" shall include the council of every urban district, whether a borough or not, and of every rural district, and the expression "county district" shall include every urban and rural district whether a borough or not.

* * * * * *

25.—(5.) Rural district councils shall also have such powers, duties, and liabilities of urban sanitary authorities under the Public Health Acts or any other Act, and such provisions of any of those Acts relating to urban districts shall apply to rural districts, as the Local Government Board by general order direct.

(6.) The power to make such general orders shall be in addition to and not in substitution for the powers conferred on the Board by section two hundred and seventy-six of the Public Health Act, 1875, or by any enactment applying that section; and every order made by the Local Government Board under this section shall be forthwith laid before Parliament. 56 & 57 Vict. c. 73. Part II.

(7.) The powers conferred on the Local Government Board by the said section two hundred and seventy-six, or by any enactment applying that section, may be exercised on the application of a county council, or with respect to any parish or part of a parish on the application of the parish council of that parish.

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Expenses of urban district council.

28. The expenses incurred by the council of an urban district in the execution of the additional powers conferred on the council by this Act shall, subject to the provisions of this Act, be defrayed in a borough out of the borough fund or rate, and in any other case out of the district fund and general district rate or other fund applicable towards defraying the expenses of the execution of the Public Health Act, 1875. 38 & 39 Vict. c. 55.

This section does not apply in the case of a transfer of the powers of a burial board under s. 62, sub-s. 1, *infra*, p. 369. It refers to expenses incurred under ss. 26 and 27, which relate to rights of way and the transfer of certain powers of the justices.

Expenses of rural district council.

29. The expenses incurred by the council of a rural district shall, subject to the provisions of this Act, be defrayed in manner directed by the Public Health Act, 1875, with respect to expenses incurred in the execution of that Act by a rural sanitary authority, and the provisions of the Public Health Acts with respect to those expenses shall apply accordingly.

56 & 57 Vict. c. 73. Part II.

Provided as follows :—

(*a.*) Any highway expenses shall be defrayed as general expenses:

(*b.*) When the Local Government Board determine any expenses under this Act to be special expenses and a separate charge on any contributory place, and such expenses would if not separately chargeable on a contributory place be raised as general expenses, they may further direct that such special expenses shall be raised in like manner as general expenses, and not by such separate rate for special expenses as is mentioned in section two hundred and thirty of the Public Health Act, 1875 :

38 & 39 Vict. c. 55.

(*c.*) A district council shall have the same power of charging highway expenses under exceptional circumstances on a contributory place as a highway board has in respect of any area under section seven of the Highways and Locomotives (Amendment) Act, 1878:

41 & 42 Vict. c. 77.

(*d.*) Where highway expenses would, if this Act had not passed, have been in whole or in part defrayed in any parish or other area out of any property or funds other than rates, the district council shall make such provision as will give to that parish or area the benefit of such property or funds by way of reduction of the rates on the parish or area.

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Provisions as to London vestries and district boards.

31.—(1.) The provisions of this Act with respect to the qualification of the electors of urban district councillors, and of the persons to be elected, and with respect to the mode of conducting the election, shall apply as if members of the local board of Woolwich and the vestries

elected under the Metropolis Management Acts, 1855 to 1890, or any Act amending those Acts, and the auditors for parishes elected under those Acts, and so far as respects the qualification of persons to be elected as if members of the district boards under the said Acts, were urban district councillors, and no person shall, ex officio, be chairman of any of the said vestries. Provided that the Elections (Hours of Poll) Act, 1885, shall apply to elections to the said vestries. 48 Vict. c. 10.

(2.) Each of the said vestries, except those electing district boards, and each of the said district boards and the local board of Woolwich, shall at their first meeting after the annual election of members elect a chairman for the year, and section forty-one of the Metropolis Management Act, 1855, shall apply only in case of the absence of such chairman, and the provisions of this Act with respect to chairmen of urban district councils being justices shall apply as if the said vestries and boards were urban district councils. 18 & 19 Vict. c. 120.

(3.) Nothing in any local and personal Act shall prevent any vestry in the county of London from holding their meeting at such time as may be directed by the vestry.

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Power to apply certain provisions of Act to urban districts and London.

33.—(1.) The Local Government Board may, on the application of the council of any municipal borough, including a county borough, or of any other urban district, make an order conferring on that council or some other representative body within the borough or district all or any of the following matters, namely, the appointment of overseers and assistant overseers, the revocation of appointment of assistant overseers, any powers, duties, or liabilities of overseers, and any powers, duties, or liabilities of a parish council, and applying

56 & 57 Vict. c. 73. Part II.

with the necessary modifications the provisions of this Act with reference thereto.

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Restrictions on application of Act to London, &c.

35. Save as specially provided by this Act, this part of this Act shall not apply to the administrative county of London or to a county borough.

Part III.

PART III.

AREAS AND BOUNDARIES.

Duties and powers of county council with respect to areas and boundaries.

36.—(1.) For the purpose of carrying this Act into effect in the case of—

(*a.*) every parish and rural sanitary district which at the passing of this Act is situate partly within and partly without an administrative county; and

(*b.*) every parish which at the passing of this Act is situate partly within and partly without a sanitary district; and

(*c.*) every rural parish which has a population of less than two hundred; and

(*d.*) every rural sanitary district which at the passing of this Act has less than five elective guardians capable of acting and voting as members of the rural sanitary authority of the district; and

(*e.*) every rural parish which is co-extensive with a rural sanitary district;

every county council shall forthwith take into consideration every such case within their county, and whether any proposal has or has not been made as mentioned in section fifty-seven of the Local Government Act, 1888, shall as soon as practicable, in accordance with that section, cause inquiries to be made and notices given,

51 & 52 Vict. c. 41.

and make such orders, if any, as they deem most suitable for carrying into effect this Act in accordance with the following provisions, namely:—

(i.) the whole of each parish, and, unless the county council for special reasons otherwise direct, the whole of each rural district shall be within the same administrative county;

(ii.) the whole of each parish shall, unless the county council for special reasons otherwise direct, be within the same county district; and

(iii.) every rural district which will have less than five elected councillors shall, unless for special reasons the county council otherwise direct, be united to some neighbouring district or districts.

(2.) Where a parish is at the passing of this Act situate in more than one urban district, the parts of the parish in each such district shall, as from the appointed day, unless the county council for special reasons otherwise direct, and subject to any alteration of area made by or in pursuance of this or any other Act, be separate parishes, in like manner as if they had been constituted separate parishes under the Divided Parishes and Poor Law Amendment Act, 1876, and the Acts amending the same.

39 & 40 Vict. c. 61.

(3.) Where a parish is divided by this Act, the county council may by order provide for the application to different parts of that parish of the provisions of this Act with respect to the appointment of trustees or beneficiaries of a charity and for the custody of parish documents, but the order, so far as regards the charity, shall not have any effect until it has received the approval of the Charity Commissioners.

(4.) Where a rural parish is co-extensive with a rural sanitary district, then, until the district is united to

56 & 57 Vict. c. 73. Part III.

some other district or districts, and unless the county council otherwise direct, a separate election of a parish council shall not be held for the parish, but the district council shall, in addition to their own powers, have the powers of, and be deemed to be, the parish council.

(5.) Where an alteration of the boundary of any county or borough seems expedient for any of the purposes mentioned in this section, application shall be made to the Local Government Board for an order under section fifty-four of the Local Government Act, 1888.

(6.) Where the alteration of a poor law union seems expedient by reason of any of the provisions of this Act, the county council may, by their order, provide for such alteration in accordance with section fifty-eight of the Local Government Act, 1888, or otherwise, but this provision shall not affect the powers of the Local Government Board with respect to the alteration of unions.

(7.) Where an order for the alteration of the boundary of any parish or the division thereof, or the union thereof or of any part thereof, with another parish is proposed to be made after the appointed day, notice thereof shall, a reasonable time before it is made, be given to the parish council of that parish, or if there is no parish council, to the parish meeting, and that parish council or parish meeting, as the case may be, shall have the right to appear at any inquiry held by the county council with reference to the order, and shall be at liberty to petition the Local Government Board against the confirmation of the order.

(8.) Where the alteration of the boundary of any parish, or the division thereof or the union thereof or of part thereof with another parish, seems expedient

for any of the purposes of this Act, provision for such alteration, division, or union may be made by an order of the county council confirmed by the Local Government Board under section fifty-seven of the Local Government Act, 1888. 56 & 57 Vict. c. 73. Part III. — 51 & 52 Vict. c. 41.

(9.) Where a parish is by this Act divided into two or more parishes, those parishes shall, until it is otherwise provided, be included in the same poor law union in which the original parish was included.

(10.) Subject to the provisions of this Act, any order made by a county council in pursuance of this part of this Act shall be deemed to be an order under section fifty-seven of the Local Government Act, 1888, and any board of guardians affected by an order shall have the same right of petitioning against that order as is given by that section to any other authority.

(11.) Where any of the areas referred to in section fifty-seven of the Local Government Act, 1888, is situate in two or more counties, or the alteration of any such area would alter the boundaries of a poor law union situate in two or more counties, a joint committee appointed by the councils of those counties shall, subject to the terms of delegation, be deemed to have and to have always had power to make orders under that section with respect to that area; and where at the passing of this Act a rural sanitary district or parish is situate in more than one county, a joint committee of the councils of those counties shall act under this section, and if any of those councils do not, within two months after request from any other of them, appoint members of such joint committee, the members of the committee actually appointed shall act as the joint committee. Provided that any question arising as to the constitution or procedure of any such joint

56 & 57 Vict. c. 73. Part III.

committee shall, if the county councils concerned fail to agree, be determined by the Local Government Board.

50 & 51 Vict. c. 61.

(12.) Every report made by the Boundary Commissioners under the Local Government Boundaries Act, 1887, shall be laid before the council of any administrative county or borough affected by that report, and before any joint committee of county councils, and it shall be the duty of such councils and joint committees to take such reports into consideration before framing any order under the powers conferred on them under this Act.

(13.) Every county council shall, within two years after the passing of this Act, or within such further period as the Local Government Board may allow either generally or with reference to any particular matter, make such orders under this section as they deem necessary for the purpose of bringing this Act into operation, and after the expiration of the said two years or further period the powers of the county council for that purpose shall be transferred to the Local Government Board, who may exercise those powers.

Though by sub-s. 2 of this section the parts of a parish situate in more than one urban district are made separate parishes, apparently a burial board in existence for the whole of the parish will still continue its functions and will be elected by the same body of electors as heretofore.

Provision as to parishes having parts with defined boundaries.

37. Where it is proved to the satisfaction of the county council that any part of a parish has a defined boundary, and has any property or rights distinct from the rest of the parish, the county council may order that the consent of a parish meeting held for that part of the parish shall be required for any such act or class of acts of the parish council affecting the said property or rights as is specified in the order.

38.—(1.) Where parishes are grouped, the grouping order shall make the necessary provisions for the name of the group, for the parish meetings in each of the grouped parishes, and for the election in manner provided by this Act of separate representatives of each parish on the parish council, and may provide for the consent of the parish meeting of a parish to any particular act of the parish council, and for any other adaptations of this Act to the group of parishes, or to the parish meetings in the group.

(2.) Where parishes are grouped the whole area under each parish council shall, unless the county council for special reasons otherwise direct, be within the same administrative county and county district.

(3.) Where parishes are grouped, the grouping order shall provide for the application of the provisions of this Act with respect to the appointment of trustees and beneficiaries of a charity, and the custody of documents, so as to preserve the separate rights of each parish.

(4.) The parish meeting of any parish may apply to the county council for a grouping order respecting that parish, and, if the parish has a less population than two hundred, for a parish council, and any such application shall be forthwith taken into consideration by the county council.

(5.) The county council may, on the application of the council for any group of parishes or of the parish meeting for any parish included in a group of parishes, make an order dissolving the group, and shall by the order make such provision as appears necessary for the election of parish councils of the parishes in the group and for the adjustment of property, rights, and liabilities as between separate parishes and the group

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56 & 57 Vict. c. 73.
Part IV.

PART IV.

SUPPLEMENTAL.

Parish Meetings and Elections.

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Supplemental provisions as to parish meetings.

45.—(1.) Subject to the provisions of this Act, parish meetings shall be held on such days and at such times and places as may be fixed by the parish council, or, if there is no parish council, by the chairman of the parish meeting.

(2.) If the chairman of the parish council is present at a parish meeting and is not a candidate for election at the meeting, he shall, save as otherwise provided by this Act, be the chairman of the meeting.

(3.) The chairman of the parish council, or any two parish councillors, or the chairman of the parish meeting, or any six parochial electors, may at any time convene a parish meeting.

Disqualifications for parish or district council.

46.—(1.) A person shall be disqualified for being elected or being a member or chairman of a council of a parish or of a district other than a borough or of a board of guardians if he—

(*a.*) is an infant or an alien; or

(*b.*) has within twelve months before his election, or since his election, received union or parochial relief; or

(*c.*) has, within five years before his election or since his election, been convicted either on indictment or summarily of any crime, and sentenced to imprisonment with hard labour without the option of a fine, or to any greater punishment, and has not received a free pardon,

or has, within or during the time aforesaid, been adjudged bankrupt, or made a composition or arrangement with his creditors; or

(*d.*) holds any paid office under the parish council or district council or board of guardians, as the case may be; or

(*e.*) is concerned in any bargain or contract entered into with the council or board, or participates in the profit of any such bargain or contract or of any work done under the authority of the council or board.

(2.) Provided that a person shall not be disqualified for being elected or being a member or chairman of any such council or board by reason of being interested—

(*a.*) in the sale or lease of any lands or in any loan of money to the council or board, or in any contract with the council for the supply from land, of which he is owner or occupier, of stone, gravel, or other materials for making or repairing highways or bridges, or in the transport of materials for the repair of roads or bridges in his own immediate neighbourhood; or

(*b.*) in any newspaper in which any advertisement relating to the affairs of the council or board is inserted; or

(*c.*) in any contract with the council or board as a shareholder in any joint stock company; but he shall not vote at any meeting of the council or board on any question in which such company are interested, except that in the case of a water company or other company established for the carrying on of works of a like public nature, this prohibition may be dispensed with by the county council.

56 & 57 Vict. c. 73. Part IV.

(3.) Where a person who is a parish councillor, or is a candidate for election as a parish councillor, is concerned in any such bargain or contract, or participates in any such profit, as would disqualify him for being a parish councillor, the disqualification may be removed by the county council if they are of opinion that such removal will be beneficial to the parish.

(4.) Where a person is disqualified by being adjudged bankrupt or making a composition or arrangement with his creditors, the disqualification shall cease, in case of bankruptcy, when the adjudication is annulled, or when he obtains his discharge with a certificate that his bankruptcy was caused by misfortune without any misconduct on his part, and, in case of composition or arrangement, on payment of his debts in full.

(5.) A person disqualified for being a guardian shall also be disqualified for being a rural district councillor.

(6.) If a member of a council of a parish, or of a district other than a borough, or of a board of guardians, is absent from meetings of the council or board for more than six months consecutively, except in case of illness or for some reason approved by the council or board, his office shall on the expiration of those months become vacant.

(7.) Where a member of a council or board of guardians becomes disqualified for holding office, or vacates his seat for absence, the council or board shall forthwith declare the office to be vacant, and signify the same by notice signed by three members and countersigned by the clerk of the council or board, and notified in such manner as the council or board direct, and the office shall thereupon become vacant.

(8.) If any person acts when disqualified, or votes when prohibited under this section, he shall for each

offence be liable on summary conviction to a fine not exceeding twenty pounds.

(9.) This section shall apply in the case of any authority whose members are elected in accordance with this Act in like manner as if that authority were a district council, and in the case of London auditors as if they were members of a district council.

Supplemental provisions as to parish councils.

47.—(1.) If at the annual election of parish councillors any vacancies are not filled by election, such number of the retiring councillors as are not re-elected, and are required to fill the vacancies, shall, if willing, continue to hold office. The councillors so to continue shall be those who were highest on the poll at the previous election, or if the numbers were equal or there was no poll, as may be determined by the parish meeting, or if not so determined, by the chairman of the parish council.

(2.) A retiring parish councillor or chairman of a parish council or parish meeting shall be re-eligible.

(3.) A parish councillor may, by notice in writing to the chairman of the council, resign his office, and a chairman of a parish council or parish meeting may resign his chairmanship by notice in writing to the council or meeting.

(4.) A casual vacancy among parish councillors or in the office of chairman of the council shall be filled by the parish council, and where there is no parish council, a casual vacancy in the office of chairman of the parish meeting shall be filled by the parish meeting, and the person elected shall retire from office at the time when the vacating councillor or chairman would have retired.

(5.) If any parish council become unable to act by reason of a want of councillors, whether from failure to elect or otherwise, the county council may order a new

56 & 57 Vict. c. 73. Part IV.

election, and may by order make such provision as seems expedient for authorising any person to act temporarily in the place of the parish council and of the chairman thereof.

Supplemental provisions as to elections, polls, and tenure of office.

48.—(1.) The election of a parish councillor shall be at a parish meeting, or at a poll consequent thereon.

(2.) Rules framed under this Act by the Local Government Board in relation to elections shall, notwithstanding anything in any other Act, have effect as if enacted in this Act, and shall provide, amongst other things—

(i.) for every candidate being nominated in writing by two parochial electors as proposer and seconder and no more;

(ii.) for preventing an elector at an election for a union or for a district not a borough from subscribing a nomination paper or voting in more than one parish or other area in the union or district;

(iii.) for preventing an elector at an election for a parish divided into parish wards from subscribing a nomination paper or voting for more than one ward;

(iv.) for fixing or enabling the county council to fix the day of the poll and the hours during which the poll is to be kept open, so, however, that the poll shall always be open between the hours of six and eight in the evening;

(v.) for the polls at elections held at the same date and in the same area being taken together, except where this is impracticable;

(vi.) for the appointment of returning officers for the elections.

(3.) At every election regulated by rules framed

under this Act, the poll shall be taken by ballot, and the Ballot Act, 1872, and the Municipal Elections (Corrupt and Illegal Practices) Act, 1884, and sections seventy-four and seventy-five and Part IV. of the Municipal Corporations Act, 1882, as amended by the last-mentioned Act (including the penal provisions of those Acts) shall, subject to adaptations, alterations, and exceptions made by such rules, apply in like manner as in the case of a municipal election. Provided that— 56 & 57 Vict. c. 73. Part IV. 35 & 36 Vict. c. 33. 47 & 48 Vict. c. 70. 45 & 46 Vict. c. 50.

(*a.*) section six of the Ballot Act, 1872, shall apply in the case of such elections, and the returning officer may, in addition to using the schools and public rooms therein referred to free of charge, for taking the poll, use the same, free of charge, for hearing objections to nomination papers and for counting votes; and

(*b.*) section thirty-seven of the Municipal Elections (Corrupt and Illegal Practices) Act, 1884, shall apply as if the election were an election mentioned in the First Schedule to that Act.

(4.) The provisions of the Municipal Corporations Act, 1882, and the enactments amending the same, with respect to the expenses of elections of councillors of a borough, and to the acceptance of office, resignation, re-eligibility of holders of office, and the filling of casual vacancies, and section fifty-six of that Act, shall, subject to the adaptations, alterations, and exceptions made by the said rules, apply in the case of guardians and of district councillors of a county district not a borough, and of members of the local board of Woolwich, and of a vestry under the Metropolis Management Acts, 1855 to 1890, and any Act amending the same. Provided that—

(*a.*) the provisions as to resignation shall not apply to guardians, and district councillors of a rural

district shall be in the same position with respect to resignation as members of a board of guardians; and

(*b.*) nothing in the enactments applied by this section shall authorise or require a returning officer to hold an election to fill a casual vacancy which occurs within six months before the ordinary day of retirement from the office in which the vacancy occurs, and the vacancy shall be filled at the next ordinary election; and

(*c.*) the rules may provide for the incidence of the charge for the expenses of the elections of guardians being the same as heretofore.

(5.) If any difficulty arises as respects the election of any individual councillor or guardian, or member of any such local board or vestry as aforesaid, or auditor, and there is no provision for holding another election, the county council may order a new election to be held and give such directions as may be necessary for the purpose of holding the election.

(6.) Any ballot boxes, fittings, and compartments provided by or belonging to any public authority, for any election (whether parliamentary, county council, municipal, school board, or other), shall, on request, and if not required for immediate use by the said authority, be lent to the returning officer for an election under this Act, upon such conditions and either free of charge or, except in the prescribed cases, for such reasonable charge as may be prescribed.

(7.) The expenses of any election under this Act shall not exceed the scale fixed by the county council, and if at the beginning of one month before the first election under this Act a county council have not framed any

such scale for their county, the Local Government Board may frame a scale for the county, and the scale so framed shall apply to the first election, and shall have effect as if it had been made by the county council, but shall not be alterable until after the first election.

(8.) This section shall, subject to any adaptations made by the said rules, apply in the case of every poll consequent on a parish meeting, as if it were a poll for the election of parish councillors.

Provision as to parish meeting for part of parish.

49. Where a parish meeting is required or authorised in pursuance of this Act to be held for a ward or other part of a parish, then—

(*a.*) the persons entitled to attend and vote at the meeting, or at any poll consequent thereon, shall be the parochial electors registered in respect of qualifications in that ward or part; and

(*b.*) the provisions of this Act with respect to parish meetings for the whole of a parish, including the provisions with respect to the convening of a parish meeting by parochial electors, shall apply as if the ward or part were the whole parish.

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Parish and District Councils.

Public notices.

51. A public notice given by a parish council for the purposes of this Act, or otherwise for the execution of their duties, and a public notice of a parish meeting, shall be given in the manner required for giving notice of vestry meetings, and by posting the notice in some conspicuous place or places within the parish, and in such other manner (if any) as appears to the council or to the persons convening the meeting desirable for giving publicity to the notice.

56 & 57 Vict. c. 73. Part IV.

Vestry meetings are convened by notice in writing stating the time and place of holding the same and the special purpose thereof, signed by a churchwarden, the incumbent, curate, or an overseer of the parish, and affixed on or near to the principal door of each church or chapel in the parish previously to the commencement of divine service (7 Will. IV. & 1 Vict. c. 45, ss. 1, 2, and 3, amending 58 Geo. III. c. 69, s. 1). The latter Act is repealed as far as concerns parish meetings and parish councils by s. 89, *post*, p. 379.

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52.—(5.) All enactments in any Act, whether general or local and personal, relating to any powers, duties, or liabilities transferred by this Act to a parish council or parish meeting from justices or the vestry or overseers or churchwardens and overseers shall, subject to the provisions of this Act and so far as circumstances admit, be construed as if any reference therein to justices or to the vestry, or to the overseers, or to the churchwardens and overseers, referred to the parish council or parish meeting as the case requires, and the said enactments shall be construed with such modifications as may be necessary for carrying this Act into effect.

Supplemental provisions as to adoptive Acts.

53.—(1.) Where on the appointed day any of the adoptive Acts is in force in a part only of a rural parish, the existing authority under the Act, or the parish meeting for that part, may transfer the powers, duties, and liabilities of the authority to the parish council, subject to any conditions with respect to the execution thereof by means of a committee as to the authority or parish meeting may seem fit, and any such conditions may be altered by any such parish meeting.

(2.) If the area on the appointed day under any authority under any of the adoptive Acts will not after that day be comprised within one rural parish, the powers and duties of the authority shall be transferred to the parish councils of the rural parishes wholly or partly

comprised in that area, or, if the area is partly comprised in an urban district, to those parish councils and the district council of the urban district, and shall, until other provision is made in pursuance of this Act, be exercised by a joint committee appointed by those councils. Where any such rural parish has not a parish council the parish meeting shall, for the purposes of this provision, be substituted for the parish council.

(3.) The property, debts, and liabilities of any authority under any of the adoptive Acts whose powers are transferred in pursuance of this Act shall continue to be the property, debts, and liabilities of the area of that authority, and the proceeds of the property shall be credited, and the debts and liabilities and the expenses incurred in respect of the said powers, duties, and liabilities, shall be charged to the account of the rates or contributions levied in that area, and where that area is situate in more than one parish the sums credited to and paid by each parish shall be apportioned in such manner as to give effect to this enactment.

(4.) The county council on the application of a parish council may, by order, alter the boundaries of any such area if they consider that the alteration can properly be made without any undue alteration of the incidence of liability to rates and contributions or of the right to property belonging to the area, regard being had to any corresponding advantage to persons subject to the liability or entitled to the right.

See notes to s. 7, *ante*, p. 327.

By the first sub-section an existing authority for the Burial Acts for part only of a rural parish may, but need not, transfer its powers, &c. to the parish council. Until such transfer is made, the burial board for part only of a parish will apparently still be under the control of the vestry or meeting in the nature of a vestry for that part. If the area of the authority

56 & 57 Vict. c. 73. Part IV.

is conterminous with a rural parish, by s. 7, sub-s. 5, *ante*, p. 326, the parish council must be substituted as the authority. For the cases in which a burial board might be appointed under the Burial Acts for part of a rural parish, see 18 & 19 Vict. c. 128, s. 12, *ante*, p. 178, and 20 & 21 Vict. c. 81, s. 5, *ante*, p. 203, and notes thereto.

Apparently "the conditions with respect to the execution of the Acts by means of a committee" are something wider than the general enactment contained in s. 56, sub-s. 2, *infra*, p. 366. The latter enacts that where a parish council have any powers, &c., which are to be exercised in a part only of a rural parish or in relation to a building or property held for the benefit of a part of a parish, the parish council shall, if required by a parish meeting held for that part, appoint annually to exercise such powers, &c., a committee consisting partly of members of the council and partly of other persons representing the said part of the parish. It is apprehended that the parish meeting or authority before transfer might impose some condition restricting the powers of the parish council more closely than as provided in s. 56, and might stipulate for a committee to be appointed entirely from persons representing the part of the parish.

By s. 37, *ante*, p. 352, where a part of a parish has a defined boundary and has any property or rights distinct from the rest of the parish, the county council may, on proof of the fact, order that the consent of a parish meeting for that part shall be required for any such act or class of acts of the parish council affecting the said property or rights as is specified in the order. The area for which a burial board has been appointed must have been definite, and that section will therefore be applicable to areas under a burial board which has transferred its powers to the parish council.

Sub-section 2 of the present section deals with certain areas not comprised in a single rural parish. Its effect is to vest the powers of the existing authority in a joint committee where the area is contained within several rural parishes or partly within a rural parish and partly within an urban district. It does not affect areas which are within several urban districts, or which are partly within a county borough and partly within an urban or rural district.

There was no provision in this Act as to the number of, or the method of electing, the members of the joint committee, and the proportionate representation of the electing authorities had to be left to agreement. The omission has now been supplied by the Local Government (Joint Committees) Act, 1897, *infra*, p. 390.

"The other provision to be made in pursuance of the Act" may either be under sub-s. 4 of this section, or under s. 36, or by a grouping order.

By sub-s. 3 the proceeds of the property transferred is to be charged to the account of the rates levied in that area. Therefore if there be any surplus arising in the execution of the Burial Acts it will go in relief of the poor rate, as provided by s. 22 of 15 & 16 Vict. c. 85, *ante*, p. 113, and will not go to the general accounts of the parish.

Effect on parish council of constitution of urban district.

54.—(1.) Where a new borough is created, or any other new urban district is constituted, or the area of an urban district is extended, then—

(*a.*) as respects any rural parish or part of a rural parish which will be comprised in the borough or urban district, provision shall be made, either by the constitution of a new parish, or by the annexation of the parish or parts thereof to another parish or parishes, or otherwise, for the appointment of overseers and for placing the parish or part in the same position as other parishes in the borough or district, and

(*b.*) as respects any parish or part which remains rural, provision shall be made for the constitution of a new parish council for the same, or for the annexation of the parish or part to some other parish or parishes, or otherwise for the government of the parish or part, and

(*c.*) provision shall also where necessary be made for the adjustment of any property, debts, and

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liabilities affected by the said creation, constitution, or extension.

(2.) The provision aforesaid shall be made—

(*a.*) Where a new borough is created, by a scheme under section two hundred and thirteen of the Municipal Corporations Act, 1882; 45 & 46 Vict. c. 50.

(*b.*) Where any other new urban district is constituted, by an order of the county council under section fifty-seven of the Local Government Act, 1888; 51 & 52 Vict. c. 41.

(*c.*) Where the area of an urban district is extended, by an order of the Local Government Board under section fifty-four, or of the county council under section fifty-seven, as the case may be, of the Local Government Act, 1888.

(3.) Where the area of an urban district is diminished this section shall apply with the necessary modifications.

* * * * * *

Committees of parish or district councils.

56.—(1.) A parish or district council may appoint committees, consisting either wholly or partly of members of the council, for the exercise of any powers which, in the opinion of the council, can be properly exercised by committees, but a committee shall not hold office beyond the next annual meeting of the council, and the acts of every such committee shall be submitted to the council for their approval.

Provided that where a committee is appointed by any district council for any of the purposes of the Public Health Acts or Highway Acts, the council may authorise the committee to institute any proceeding or do any act which the council might have instituted or done for that purpose other than the raising of any loan or the making of any rate or contract.

(2.) Where a parish council have any powers and

duties which are to be exercised in a part only of the parish, or in relation to a recreation ground, building, or property held for the benefit of a part of a parish, and the part has a defined boundary, the parish council shall, if required by a parish meeting held for that part, appoint annually to exercise such powers and duties a committee consisting partly of members of the council and partly of other persons representing the said part of the parish.

(3.) With respect to committees of parish and district councils the provisions in the First Schedule to this Act shall have effect.

(4.) This section shall not apply to the council of a borough.

See notes to ss. 7 and 53, *ante*, pp. 327 and 363.

Joint committees.

57.—(1.) A parish or district council may concur with any other parish or district council or councils in appointing out of their respective bodies a joint committee for any purpose in respect of which they are jointly interested, and in conferring, with or without conditions or restrictions, on any such committee any powers which the appointing council might exercise if the purpose related exclusively to their own parish or district.

(2.) Provided that a council shall not delegate to any such committee any power to borrow money or make any rate.

(3.) A joint committee appointed under this section shall not hold office beyond the expiration of fourteen days after the next annual meeting of any of the councils who appointed it.

(4.) The costs of a joint committee under this section shall be defrayed by the councils by whom it is ap-

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pointed in such proportions as they may agree upon, or as may be determined in case of difference by the county council.

(5.) Where a parish council can under this Act be required to appoint a committee consisting partly of members of the council and partly of other persons, that requirement may also be made in the case of a joint committee, and shall be duly complied with by the parish councils concerned at the time of the appointment of such committee.

Audit of accounts of district and parish councils and inspection.

58.—(1.) The accounts of the receipts and payments of parish and district councils, and of parish meetings for parishes not having parish councils, and their committees and officers, shall be made up yearly to the thirty-first day of March, or in the case of accounts which are required to be audited half-yearly, then half-yearly to the thirtieth day of September and the thirty-first day of March in each year, and in such form as the Local Government Board prescribe.

(2.) The said accounts shall, except in the case of accounts audited by the auditors of a borough (but inclusive of the accounts of a joint committee appointed by a borough council with another council not being a borough council), be audited by a district auditor, and the enactments relating to audit by district auditors of accounts of urban sanitary authorities and their officers, and to all matters incidental thereto and consequential thereon, shall apply accordingly, except that in the case of the accounts of rural district councils, their committees and officers, the audit shall be half-yearly instead of yearly.

(3.) The Local Government Board may, with respect to any audit to which this section applies, make rules modifying the enactments as to publication of notice of

the audit and of the abstract of accounts and the report of the auditor.

(4.) Every parochial elector of a rural parish may, at all reasonable times, without payment, inspect and take copies of and extracts from all books, accounts, and documents belonging to or under the control of the parish council of the parish or parish meeting.

(5.) Every parochial elector of a parish in a rural district may, at all reasonable times, without payment, inspect and take copies of and extracts from all books, accounts, and documents belonging to or under the control of the district council of the district.

By 15 & 16 Vict. c. 85, s. 18, *ante*, p. 110, the vestry is to appoint yearly two persons, not being members of the board, to be auditors of the accounts of the board. Where a parish council is the authority for the execution of the Burial Acts, this section will take the place of previous provisions.

Miscellaneous.

* * * * * *

Place of meeting of parish or district council or board of guardians.

61. No parish meeting or meeting of a parish council, or of a district council, or of a board of guardians shall be held in premises licensed for the sale of intoxicating liquor, except in cases where no other suitable room is available for such meeting either free of charge or at a reasonable cost.

Permissive transfer to urban district council of powers of other authorities.

62.—(1.) Where there is in any urban district, or part of an urban district, any authority constituted under any of the adoptive Acts, the council of that district may resolve that the powers, duties, property, debts, and liabilities of that authority shall be transferred to the council as from the date specified in the resolution, and upon that date the same shall be transferred accordingly, and the authority shall cease to exist, and the council shall be the successors of that authority.

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(2.) After the appointed day any of the adoptive Acts shall not be adopted for any part of an urban district without the approval of the council of that district.

See as to the constitution of a borough council as a burial board, 17 & 18 Vict. c. 87, ss. 1 and 2, *ante*, pp. 158 and 159.

18 & 19 Vict. c. 128, ss. 19 and 20, *ante*, p. 189, deals with local boards acting as burial boards under local Acts.

By 20 & 21 Vict. c. 81, s. 4, *ante*, p. 201, a local board of health may, upon petition, be constituted a burial board.

The Public Health Act, 1875 (38 & 39 Vict. c. 55, s. 343, and Sched. V.), *post*, p. 718, re-enacting and amending 21 & 22 Vict. c. 98, s. 49, and 29 & 30 Vict. c. 90, s. 44, contains other provisions as to local boards acting as and taking over the powers of burial boards.

See 42 & 43 Vict. c. 31, *ante*, p. 263, as to the powers of sanitary authorities to provide cemeteries otherwise than under the Burial Acts.

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Transfer of property and debts and liabilities.

67. Where any powers and duties are transferred by this Act from one authority to another authority—

(1.) All property held by the first authority for the purpose or by virtue of such powers and duties shall pass to and vest in the other authority, subject to all debts and liabilities affecting the same; and

(2.) The latter authority shall hold the same for the estate, interest, and purposes, and subject to the covenants, conditions, and restrictions for and subject to which the property would have been held if this Act had not passed, so far as the same are not modified by or in pursuance of this Act; and

(3.) All debts and liabilities of the first authority incurred by virtue of such powers and duties shall become debts and liabilities of the latter authority, and be defrayed out of the like property and funds, out of which they would have been defrayed if this Act had not passed.

68.—(1.) Where any adjustment is required for the purpose of this Act, or of any order, or thing made or done under this Act, then, if the adjustment is not otherwise made, the authorities interested may make agreements for the purpose, and may thereby adjust any property, income, debts, liabilities, and expenses, so far as affected by this Act, or such scheme, order, or thing, of the parties to the agreement.

(2.) The agreement may provide for the transfer or retention of any property, debts, or liabilities, with or without any conditions, and for the joint use of any property, and for payment by either party to the agreement in respect of property, debts, and liabilities so transferred or retained, or of such joint user, and in respect of the salary or remuneration of any officer or person, and that either by way of an annual payment or, except in the case of a salary or remuneration, by way of a capital sum, or of a terminable annuity for a period not exceeding that allowed by the Local Government Board: Provided that where any of the authorities interested is a board of guardians, any such agreement, so far as it relates to the joint use of any property, shall be subject to the approval of the Local Government Board.

(3.) In default of an agreement, and as far as any such agreement does not extend, such adjustment shall be referred to arbitration in accordance with the Arbitration Act, 1889, and the arbitrator shall have power to disallow as costs in the arbitration the costs of any witness whom he considers to have been called unnecessarily, and any other costs which he considers to have been incurred unnecessarily, and his award may provide for any matter for which an agreement might have provided.

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(4.) Any sum required to be paid by any authority for the purpose of adjustment may be paid as part of the general expenses of exercising their duties under this Act, or out of such special fund as the authority, with the approval of the Local Government Board, direct, and if it is a capital sum the payment thereof shall be a purpose for which the authority may borrow under the Acts relating to such authority, on the security of all or any of the funds, rates, and revenues of the authority, and any such sum may be borrowed without the consent of any authority, so that it be repaid within such period as the Local Government Board may sanction.

(5.) Any capital sum paid to any authority for the purpose of any adjustment under this Act shall be treated as capital, and applied, with the sanction of the Local Government Board, either in the repayment of debt or for any other purpose for which capital money may be applied.

Power to deal with matters arising out of alteration of boundaries.

69. Where an alteration of any area is made by this Act, an order for any of the matters mentioned in section fifty-nine of the Local Government Act, 1888, may, if it appears to the county council desirable, be made by the county council, or, in the case of an area situate in more than one county, by a joint committee of county councils, but nothing in this section shall empower a county council or joint committee to alter the boundaries of a county.

Summary proceeding for determination of questions as to transfer of powers.

70.—(1.) If any question arises, or is about to arise, as to whether any power, duty, or liability is or is not transferred by or under this Act to any parish council, parish meeting, or district council, or any property is or is not vested in the parish council, or in the chairman and overseers of a rural parish, or in a district council,

that question, without prejudice to any other mode of trying it, may, on the application of the council, meeting, or other local authority concerned, be submitted for decision to the High Court in such summary manner as, subject to any rules of court, may be directed by the Court; and the Court, after hearing such parties and taking such evidence (if any) as it thinks just, shall decide the question.

(2.) If any question arises or is about to arise under this Act as to the appointment of the trustees or beneficiaries of any charity, or as to the persons in whom the property of any charity is vested, such question shall, at the request of any trustee, beneficiary, or other person interested, be determined in the first instance by the Charity Commissioners, subject to an appeal to the High Court brought within three months after such determination. Provided that an appeal to the High Court of Justice from any determination of the Charity Commissioners under this section may be presented only under the same conditions as are prescribed in the case of appeals to the High Court from orders made by the Charity Commissioners under the Charitable Trusts Acts, 1853 to 1891.

(3.) An appeal shall, with the leave of the High Court or Court of Appeal, but not otherwise, lie to the Court of Appeal against any decision under this section.

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75.—(1.) The definition of "parish" in section one hundred of the Local Government Act, 1888, shall not apply to this Act, but, save as aforesaid, expressions used in this Act shall, unless the context otherwise requires, have the same meaning as in the said Act.

(2.) In this Act, unless the context otherwise requires—

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Any reference to population means the population according to the census of one thousand eight hundred and ninety-one.

The expression "parochial elector," when used with reference to a parish in an urban district, or in the county of London or any county borough, means any person who would be a parochial elector of the parish if it were a rural parish.

The expression "election" includes both the nomination and the poll.

The expression "trustees" includes persons administering or managing any charity or recreation ground, or other property or thing in relation to which the word is used.

The expression "ecclesiastical charity" includes a charity, the endowment whereof is held for some one or more of the following purposes:—

(*a.*) for any spiritual purpose which is a legal purpose; or

(*b.*) for the benefit of any spiritual person or ecclesiastical officer as such; or

(*c.*) for use, if a building, as a church, chapel, mission room, or Sunday school, or otherwise by any particular church or denomination; or

(*d.*) for the maintenance, repair, or improvement of any such building as aforesaid, or for the maintenance of divine service therein; or

(*e.*) otherwise for the benefit of any particular church or denomination, or of any members thereof as such.

Provided that where any endowment of a charity, other than a building held for any of the purposes aforesaid, is held in part only for some of the purposes aforesaid, the charity, so far as that endowment is

concerned, shall be an ecclesiastical charity within the meaning of this Act; and the Charity Commissioners shall, on application by any person interested, make such provision for the apportionment and management of that endowment as seems to them necessary or expedient for giving effect to this Act.

The expression shall also include any building which in the opinion of the Charity Commissioners has been erected or provided within forty years before the passing of this Act mainly by or at the cost of members of any particular church or denomination.

The expression "affairs of the church" shall include the distribution of offertories or other collections made in any church.

The expression "parochial charity" means a charity the benefits of which are or the separate distribution of the benefits of which is confined to inhabitants of a single parish, or of a single ancient ecclesiastical parish divided into two or more parishes, or of not more than five neighbouring parishes.

The expression "vestry" in relation to a parish means the inhabitants of the parish whether in vestry assembled or not, and includes any select vestry either by statute or at common law.

The expression "rateable value" means the rateable value stated in the valuation list in force, or, if there is no such list, in the last poor rate.

The expression "county" includes a county borough, and the expression "county council" includes the council of a county borough.

The expression "elementary school" means an elementary school within the meaning of the Elementary Education Act, 1870. 33 & 34 Vict. c. 75.

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The expression "local and personal Act" includes a provisional order confirmed by an Act and the Act confirming the order.

The expression "prescribed" means prescribed by order of the Local Government Board.

Extent of Act.

76. This Act shall not extend to Scotland or Ireland.

Short title.

77. This Act may be cited as the Local Government Act, 1894.

Part V.

PART V.

TRANSITORY PROVISIONS.

* * * * * *

Existing officers.

81.—(1.) Where the powers and duties of any authority other than justices are transferred by this Act to any parish or district council, the officers of that authority shall become the officers of that council, and for the purposes of this section the body appointing a surveyor of highways shall be deemed to be a highway authority and any paid surveyor to be an officer of that body.

13 & 14 Vict. c. 57.

(2.) Where there is in a rural parish an existing vestry clerk appointed under the Vestries Act, 1850, he shall become the clerk of the parish council, and if there is also an assistant overseer in the parish, then, notwithstanding the foregoing provisions of this Act, that assistant overseer shall not, while such vestry clerk holds office, be the clerk of the parish council.

(3.) Any existing assistant overseer in a parish for which a parish council is elected shall, unless appointed by a board of guardians, become an officer of the parish council.

(4.) Every such officer, vestry clerk, and assistant overseer, as above in this section mentioned shall hold

his office by the same tenure and upon the same terms and conditions as heretofore, and while performing the same duties shall receive not less salary or remuneration than heretofore. 56 & 57 Vict. c. 73. Part V.

(5.) Where a parish or rural sanitary district is divided by this Act, any officer for the parish or district so divided shall hold his office as such officer for each parish or district formed by the division, and his salary shall be borne by the respective parishes or districts in proportion to their rateable value at the commencement of the local financial year next after the passing of this Act.

(6.) So much of any enactment as authorises the appointment of assistant overseers by a board of guardians shall be repealed as from the appointed day.

(7.) Section one hundred and twenty of the Local Government Act, 1888, which relates to compensation to existing officers, shall apply in the case of existing officers affected by this Act, whether officers above in this section mentioned or not, as if references in that section to the county council were references to the parish council, or the district council, or board of guardians or other authority whose officer the person affected is when the claim for compensation arises as the case may require. Provided that all expenses incurred by a district council in pursuance of this section shall be paid as general expenses of the council, and any expenses incurred by a board of guardians in pursuance of this section shall be paid out of their common fund, and any expenses incurred by any other authority in pursuance of this section shall be paid out of the fund applicable to payment of the salary of the officers affected. 51 & 52 Vict. c. 41.

56 & 57 Vict. c. 73. Part V.

By sub-s. 1 of this section the officers of a burial board who may be appointed under 15 & 16 Vict. c. 85, s. 15, *ante*, p. 108, will become the officers of the parish council where the latter takes over the powers, &c., of the burial board.

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85.—(5.) The change of name of an urban sanitary authority shall not affect their identity as a corporate body or derogate from their powers, and any enactment in any Act, whether public general or local and personal, referring to the members of such authority shall, unless inconsistent with this Act, continue to refer to the members of such authority under its new name.

Saving for existing securities and discharge of debts.

86.—(1.) Nothing in this Act shall prejudicially affect any securities granted before the passing of this Act on the credit of any rate or property transferred to a council or parish meeting by this Act; and all such securities, as well as all unsecured debts, liabilities, and obligations incurred by any authority in the exercise of any powers or in relation to any property transferred from them to a council or parish meeting shall be discharged, paid, and satisfied by that council or parish meeting, and where for that purpose it is necessary to continue the levy of any rate or the exercise of any power which would have existed but for this Act, that rate may continue to be levied and that power to be exercised either by the authority who otherwise would have levied or exercised the same, or by the transferee as the case may require.

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Saving for existing bye-laws.

87. All such bye-laws, orders, and regulations of any authority, whose powers and duties are transferred by this Act to any council, as are in force at the time of the transfer, shall, so far as they relate to or are in pursuance of the powers and duties transferred, continue

in force as if made by that council, and may be revoked or altered accordingly.

Saving for pending contracts, &c.

88.—(1.) If at the time when any powers, duties, liabilities, debts, or property are by this Act transferred to a council or parish meeting, any action or proceeding, or any cause of action or proceeding is pending or existing by or against any authority in relation thereto, the same shall not be in anywise prejudicially affected by the passing of this Act, but may be continued, prosecuted, and enforced by or against the council or parish meeting as successors of the said authority in like manner as if this Act had not been passed.

(2.) All contracts, deeds, bonds, agreements, and other instruments subsisting at the time of the transfer in this section mentioned, and affecting any of such powers, duties, liabilities, debts, or property, shall be of as full force and effect against or in favour of the council or parish meeting, and may be enforced as fully and effectually as if, instead of the authority, the council or parish meeting had been a party thereto.

Repeal.

89. The Acts specified in the Second Schedule to this Act are hereby repealed as from the appointed day to the extent in the third column of that schedule mentioned, and so much of any Act, whether public general or local and personal, as is inconsistent with this Act is also hereby repealed. Provided that where any wards of an urban district have been created, or any number of members of an urban sanitary authority fixed, by or in pursuance of any local and personal Act, such wards and number of members shall continue and be alterable in like manner as if they had been fixed by an order of the county council under this or any other Act.

56 & 57 Vict. c. 73.

SCHEDULES.

FIRST SCHEDULE.

RULES AS TO PARISH MEETINGS, PARISH COUNCILS, AND COMMITTEES.

PART ONE.

Rules applicable to Parish Meetings.

Sect. 2.

(1.) *The annual assembly of the parish meeting shall be held on the twenty-fifth day of March in each year, or within seven days before or after that day.*

This rule is repealed by the Local Government Act, 1897, which provides that the annual assembly of the parish meeting shall be held on some day between March 1st and April 1st, both inclusive, in each year.

(2.) Not less than seven clear days before any parish meeting, public notice thereof shall be given specifying the time and place of the intended meeting and the business to be transacted at the meeting, and signed by the chairman of the parish council or other conveners of the meeting.

(3.) If the business relates to the establishment or dissolution of a parish council, or the grouping of a parish, or the adoption of any of the adoptive Acts, not less than fourteen days notice shall be given.

(4.) A parish meeting may discuss parish affairs and pass resolutions thereon.

(5.) Every question to be decided by a parish meeting shall, in the first instance, be decided by the majority of those present and voting on the question, and the chairman shall announce his decision as to the result, and that decision shall be final, unless a poll is demanded.

(6.) A poll may be demanded at any time before the conclusion of a parish meeting.

(7.) A poll may be demanded by any one parochial elector in the case of a resolution respecting any of the following matters, namely :—

(*a.*) Any application, representation, or complaint to a county council or district council; 56 & 57 Vict. c. 73.

(*b.*) The appointment of a chairman for the year or of a committee, or the delegation of any powers or duties to a committee, or the approval of the acts of a committee;

(*c.*) The appointment of an overseer, the appointment or revocation of the appointment or dismissal of an assistant overseer or a parish officer;

(*d.*) The appointment of trustees or beneficiaries of a charity;

(*e.*) The adoption of any of the adoptive Acts;

(*f.*) The formation or dissolution of a school board;

(*g.*) The consent or refusal of consent to any act, matter, or thing which cannot by law be done without that consent;

(*h.*) The incurring of any expense or liability;

(*i.*) The place and time for the assembly of the parish meeting;

(*k.*) Any other prescribed matter;

but, save as aforesaid, a poll shall not be taken unless either the chairman of the meeting assents, or the poll is demanded by parochial electors present at the meeting, not being less than five in number or one third of those present, whichever number is least.

(8.) In case of an equal division of votes at a parish meeting the chairman shall have a second or casting vote.

(9.) Where a parish meeting is held for the election of parish councillors, opportunity shall be given at the meeting for putting questions to such of the candidates as are present, and receiving explanations from them, and any candidate shall be entitled to attend the meeting and speak thereat, but, unless he is a parochial elector, not to vote.

(10.) If the chairman of the parish meeting is absent from or unwilling or unable to take the chair at any assembly of the parish meeting, the meeting may appoint a person to take the chair, and that person shall have, for the purpose of that meeting, the powers and authority of the chairman.

(11.) Any notice required to be given to or served on a parish meeting may be given to or served on the chairman of the parish meeting.

56 & 57 Vict. c. 73.

Sect. 3.

PART TWO.

Rules applicable to Parish Councils.

(1.) Every parish councillor shall, at the first meeting after his election, or if the council at the first meeting so permit, then at a later meeting fixed by the council, sign, in the presence of some member of the council, a declaration that he accepts the office, and if he does not sign such a declaration his office shall be void.

(2.) If any casual vacancy arises in the council, the council shall forthwith be convened for filling the vacancy.

(3.) The first business at the annual meeting shall be to elect a chairman and to appoint the overseers.

(4.) The chairman may at any time convene a meeting of the parish council. If the chairman refuses to convene a meeting of the council after a requisition for that purpose signed by two members of the council has been presented to him, any two members of the council may forthwith, on that refusal, convene a meeting. If the chairman (without so refusing) does not within seven days after such presentation convene a meeting, any two members of the council may, on the expiration of those seven days, convene a meeting.

(5.) Three clear days at least before any meeting of a parish council notice thereof, specifying the time and place of the intended meeting and the business to be transacted at the meeting, and signed by or on behalf of the chairman of the parish council or persons convening the meeting, shall be given to every member of the parish council, and in case of the annual meeting notice specifying the like particulars shall be given to every member of the parish council immediately after his election.

(6.) Any notice required by law to be given to the chairman or any other member of the parish council may be left at or sent by post to the usual place of abode of such chairman or member.

(7.) No business shall be transacted at any meeting of a parish council unless at least one third of the full number of members are present thereat, subject to this qualification, that in no case shall the quorum be less than three.

(8.) The names of the members present at any meeting of

the parish council, as well as of those voting on each question on which a division is taken, shall be recorded, so as to show whether each vote given was for or against the question. 56 & 57 Vict. c. 73.

(9.) Every question at a meeting of a parish council shall be decided by a majority of votes of the members present and voting on that question.

(10.) In case of an equal division of votes the chairman of the meeting shall have a second or casting vote.

(11.) The parish council may, if they think fit, appoint one of their number to be vice-chairman, and the vice-chairman shall, in the absence or during the inability of the chairman, have the powers and authority of the chairman.

(12.) The proceedings of a parish council shall not be invalidated by any vacancy among their members, or by any defect in the election or qualification of any members thereof.

(13.) A parish council shall hold not less than four meetings in each year, of which one shall be the annual meeting, and every such meeting shall be open to the public unless the council otherwise direct.

(14.) Every cheque or other order for payment of money by a parish council shall be signed by two members of the council.

(15.) Any notice required to be given to or served on a parish council may be given to or served on the clerk to the parish council.

(16.) The parish council may appear before any court or in any legal proceeding by their clerk or by any officer or member authorised generally or in respect of any special proceeding by resolution of the council, and their clerk or any member or officer shall, if so authorised, be at liberty to institute and carry on any proceeding which the parish council are authorised to institute and carry on.

PART THREE. Sects. 2, 3

General.

(1.) Minutes of the proceedings of every parish council and parish meeting shall be kept in a book provided for that purpose.

(2.) A minute of proceedings at a meeting of a parish council, or of a committee of a parish or district council, or at a parish

56 & 57 Vict. c. 73.

meeting, signed at the same or the next ensuing meeting by a person describing himself as or appearing to be chairman of the meeting at which the minute is signed, shall be received in evidence without further proof.

(3.) Until the contrary is proved, every meeting in respect of the proceedings whereof a minute has been so made shall be deemed to have been duly convened and held, and all the members of the meeting shall be deemed to have been duly qualified; and where the proceedings are proceedings of a committee, the committee shall be deemed to have been duly constituted, and to have had power to deal with the matters referred to in the minutes.

(4.) Any instrument purporting to be executed under the hands or under the hands and seals of the chairman and of two other members of a parish council or of a parish meeting shall, until the contrary is proved, be deemed to have been duly so executed.

(5.) Subject to the provisions of this Act, a parish council may make, vary, and revoke standing orders for the regulation of their proceedings and business, and of the proceedings and business at parish meetings for a rural parish having a parish council.

(6.) Where there is no council for a rural parish, the parish meeting may, subject to the provisions of this Act, regulate their own proceedings and business.

Sect. 56.

PART FOUR.

Proceedings of Committees of Parish or District Councils.

(1.) The quorum, proceedings, and place of meeting of a committee, whether within or without the parish or district, and the area (if any) within which the committee are to exercise their authority, shall be such as may be determined by regulations of the council or councils appointing the committee.

(2.) Subject to such regulations, the quorum, proceedings, and place of meeting, whether within or without the parish or district, shall be such as the committee direct, and the chairman at any meeting of the committee shall have a second or casting vote.

SECOND SCHEDULE.

56 & 57 Vict. c. 73. Sect. 89.

ENACTMENTS REPEALED.

Session and Chapter.	Short Title.	Extent of Repeal.
54 Geo. III. c. 91.	An Act to amend so much of an Act passed in the forty-third year of her late Majesty Queen Elizabeth, as concerns the time for appointing overseers of the poor.	The whole Act, so far as it relates to rural parishes.
58 Geo. III. c. 69.	The Vestries Act, 1818.	Sections one, two, three, and four, so far as they relate to parish meetings and parish councils under this Act.
59 Geo. III. c. 85.	The Vestries Act, 1819.	The whole Act, so far as it relates to parish meetings under this Act.
1 & 2 Will. IV. c. 60.	The Vestries Act, 1831.	The whole Act, so far as it relates to parish meetings under this Act, except section thirty-nine.
4 & 5 Will. IV. c. 76.	The Poor Law Amendment Act, 1834.	In section thirty-eight, the words "and the said guardians shall be elected by the ratepayers and by such owners of property in the parishes forming such union as shall in manner hereinafter men-

56 & 57 Vict. c. 73. Sect. 89.	Session and Chapter.	Short Title.	Extent of Repeal.
	4 & 5 Will. IV. c. 76.	The Poor Law Amendment Act, 1834.	"tioned require to have "their names entered as "entitled to vote as owners "in the books of such "parishes respectively"; and from "and also fix a "qualification" to "for the "ensuing year shall be "chosen"; and from "and "every justice of the peace" to "as such elected guar- "dians"; and from "Pro- "vided also" to the end of the section. Section thirty-nine, from "and "every justice" to the end of the section. In section forty, the words "In all cases of the election "of guardians under this "Act or." Section forty-one. Section forty-eight from "Pro- "vided always" to the end of the section, so far as the words repealed relate to the office of parish or district councillor or guardian.
	5 & 6 Will. IV. c. 50.	The Highway Act, 1835.	In section forty-eight, the words "with the consent "in writing of the justices "of the peace at a special "sessions for the high- "ways" and the words "at "and for such price as the "said justices may deem "fair and reasonable."
	7 Will. IV. & 1 Vict. c. 45.	The Parish Notices Act, 1837.	Section three, so far as it relates to notices by parish councils and notices of parish meetings under this Act.

Session and Chapter.	Short Title.	Extent of Repeal.
5 & 6 Vict. c. 57.	The Poor Law Amendment Act, 1842.	Section eight, section eleven, from "and in every case," to the end of the section, and section fifteen.
7 & 8 Vict. c. 101.	The Poor Law Amendment Act, 1844.	Sections seventeen, twenty, and twenty-four, and section sixty-one from "and "wherever any such col- "lector" to "provisions of this Act."
13 & 14 Vict. c. 57.	The Vestries Act, 1850.	Sections six, seven, eight, and nine, so far as they relate to parish meetings under this Act.
14 & 15 Vict. c. 105.	The Poor Law Amendment Act, 1851.	Section two and section three.
16 & 17 Vict. c. 65.	The Vestries Act, 1853.	The whole Act, so far as it relates to parish meetings under this Act.
18 & 19 Vict. c. 120.	The Metropolis Management Act, 1855.	Section six. Sections thirteen to twenty-seven. In section thirty the words "or custom." Section fifty-four. In section two hundred and thirty-five the words "un- "der this Act," where they secondly occur.
19 & 20 Vict. c. 112.	The Metropolis Management Amendment Act, 1856.	Sections six, seven, and eight.
23 & 24 Vict. c. 30.	The Public Improvements Act, 1860.	In section four the words "in value."

56 & 57 Vict. c. 73. Sect. 89.	Session and Chapter.	Short Title.	Extent of Repeal.
	25 & 26 Vict. c. 102.	The Metropolis Management Amendment Act, 1862.	Section thirty-six; and section forty from "by rating" to "of such parish."
	25 & 26 Vict. c. 103.	The Union Assessment Act, 1862.	In section two, the words "consisting partly of ex "officio and partly of "elected guardians," and from "Provided always" to the end of the section. In section five, the words "ex officio or elected," in both places where they occur, and the words "as "the case may be."
	30 & 31 Vict. c. 6.	The Metropolitan Poor Act, 1867.	Section seventy-nine.
	30 & 31 Vict. c. 106.	The Poor Law Amendment Act, 1867.	Sections four, five, six, and nine, section ten so far as it relates to elections of guardians, and section twelve.
	31 & 32 Vict. c. 122.	The Poor Law Amendment Act, 1868.	Section four, from "and the "powers" to the end of the section.
	38 & 39 Vict. c. 55.	The Public Health Act, 1875.	Section eight from "and the "number" to the end of the section. In section nine, from "Provided that "(1) An ex officio guardian" to "situated in an urban district" (being the provisoes); and the words "from owners or occupiers "of property situated in "the rural district of a "value sufficient to qualify

Session and Chapter.	Short Title.	Extent of Repeal.
38 & 39 Vict. c. 55.	The Public Health Act, 1875.	"them as elective guardians for a union," and from "Subject to the provisions of this Act" to the end of the section. Section two hundred, except so far as it applies to boroughs; sections two hundred and one and two hundred and four, section two hundred and forty-eight, except so far as it relates to overseers, and section three hundred and twelve. So much of Schedule I. as relates to committees, and Schedule II.
39 & 40 Vict. c. 61.	The Divided Parishes and Poor Law Amendment Act, 1876.	Section six, from "The meeting of inhabitants" to the end of the section, so far as it relates to rural parishes. Section eight to "no alteration," except as to cases where a parish is dealt with by order of the Local Government Board.
39 & 40 Vict. c. 79.	The Elementary Education Act, 1876.	In section seven the words "so however that in the case of a committee appointed by guardians one third at least shall consist of ex officio guardians, if there are any and sufficient ex officio guardians."
47 & 48 Vict. c. 70.	The Municipal Elections (Corrupt and Illegal Practices) Act, 1884.	Section thirty-six, from "(*h.*) The Local Government Board" to "validity of any vote."

56 & 57 Vict. c. 73. Sect. 89.

Session and Chapter.	Short Title.	Extent of Repeal.
48 & 49 Vict. c. 53.	The Public Health (Members and Officers) Act, 1885.	Sections three and four.
55 & 56 Vict. c. 53.	The Public Libraries Act, 1892.	Sub-section three of section one. The First Schedule so far as it applies to rural parishes.

60 & 61 Vict. c. 40.

LOCAL GOVERNMENT (JOINT COMMITTEES) ACT, 1897.

60 & 61 VICT. C. 40.

An Act to amend the Local Government Act, 1894, with regard to Joint Committees for the purposes of the Burial Acts. [6th August, 1897.]

BE it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1.—(1.) Where a joint committee is appointed under section fifty-three of the Local Government Act, 1894, for the purposes of the Burial Acts 1852 to 1885—

(*a*) any expenses incurred in carrying out those purposes shall be defrayed, any money borrowed for those purposes shall be borrowed, and any receipts arising from those purposes shall be

divided, by the councils appointing the committee in such proportion as they may agree upon, or, as in default of agreement, may be determined by the county council, or, if one of the councils so appointing is the council of a county borough, by the Local Government Board;

(*b*) the consent of the Local Government Board shall be required to the borrowing by any council of any money required to be borrowed for those purposes, but that consent shall be conclusive as to the power of the council to borrow, and no other consent shall be required either under the said Burial Acts, or the Local Government Act, 1894, or any other Act;

(*c*) Part IV. of the First Schedule to the Local Government Act, 1894, shall apply to the proceedings of the committee.

(2.) If any difference arises as to the constitution of any such committee it may be determined by order of the Local Government Board.

(3.) For the purposes of this section references to a council shall, in the case of a parish not having a parish council, include the [illegible] meeting, and the parish meeting shall have [illegible] power of borrowing for the purposes of the Burial Acts [illegible] parish council would have.

2.—This Act shall be construed as one with the Local Government Act, 1894, and may be cited as the Local Government (Joint Committees) Act, 1897.

CONSECRATION OF CHURCHYARDS.

30 & 31 VICT. C. 133.

30 & 31 Vict. c. 133.

An Act relating to the Consecration of Churchyards.

[20th August, 1867.]

WHEREAS it is expedient to diminish the expense attendant on the consecration of portions of ground adjoining and added to existing churchyards:

Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

The preamble was repealed by the Statute Law Revision Act, 1893.

Power for bishop to sign instrument of consecration at churchyard without presence of chancellor, &c.

1. Where any ground adjoining to an existing churchyard has been or is added thereto, the bishop of the diocese may, if he thinks fit, at the churchyard or in the church to which it belongs, by his own hand, or by the hand of any bishop of the united Church of England and Ireland lawfully appointed as his commissary, sign an instrument declaring or recording the consecration of such ground, without the presence of the chancellor or registrar of the diocese being necessary; and the signature of the bishop to such instrument shall be attested by the chancellor or by a surrogate or by any two clergymen of the diocese, and shall be in the following form, endorsed on a plan of the ground so added: I, *A.B.*, Bishop of , do hereby declare and record the ground added to the churchyard of , as on the within plan, to be consecrated ground and part of the said churchyard; and such instrument,

so signed and attested, on being deposited in the registry of the diocese, shall have the same effect as a sentence of consecration. 30 & 31 Vict. c. 133.

2. No officer of the bishop or of the diocese shall receive any fee for attendance at such consecration, or any allowance for travelling or for attendance. No officer attending to take fee.

3. A fee of five shillings shall be payable to the registrar for the deposit of every such instrument of consecration. Fee for deposit.

4. And whereas by an Act passed in the fourth and fifth years of the reign of her present Majesty, intituled *An Act to afford further facilities for the Conveyance and Endowment of Sites for Schools*, and by another Act passed in the twelfth and thirteenth years of the reign of her present Majesty, intituled *An Act to extend and explain the provisions of the Acts for the granting of Sites for Schools*, powers are given to persons being seised in fee simple, fee tail, or for life of and in any manor or lands of freehold, copyhold, or customary tenure, and having the beneficial interest therein, to grant, convey, or enfranchise, by way of gift, sale, or exchange in fee simple or for term of years, any quantity not exceeding one acre of such land as a site for a school, and it is expedient that the same powers should be extended to persons willing to grant land for the enlargement of churchyards or burial places in England or Wales: Be it therefore enacted, that the said Acts shall be deemed to apply to all persons desirous of granting land for the purpose of such enlargement, in the same way as if the said land had been granted as a site for a school; provided nevertheless, that no such grant shall be made otherwise than in fee simple, and may be made in the form hereinafter provided; and that every such grant made by any person seised only for life shall be valid without the concurrence therein of the person next Powers given in School Sites Acts for conveyance of land to apply to conveyances under this Act.

30 & 31 Vict. c. 133.

entitled in remainder in fee simple or fee tail, and such conveyance shall be good and valid without any license or writ of Ad quod damnum, the Statutes of Mortmain, or any other statute or law, to the contrary notwithstanding.

The Acts referred to are 4 & 5 Vict. c. 38 and 12 & 13 Vict. c. 49. By the Short Titles Act, 1896, these Acts may be cited as the Schools Sites Acts, 1841 and 1849.

Form of conveyance of lands for adding to existing churchyards.

5. Any lands or hereditaments adjoining any churchyard or burial place may be conveyed for the purpose of adding thereto by a deed in the form following, with such variations (if any) as the circumstances of the case may require:

'I [*or* We, *or the corporate title of a Corporation,*] 'under the authority of "The Consecration of Church-'yards Act, 1867," do hereby freely and voluntarily 'give, grant, and convey [*or, as the case may be,* do 'hereby, in consideration of the sum of to me, 'or us, *or* the paid, grant and convey] unto 'the person or persons, or corporation sole or aggre-'gate, in whom the churchyard or the burial place 'known as of is now vested, 'his or their heirs or successors, all [*describing the 'hereditaments to be conveyed*], and all right, title, and 'interest in the same and every part thereof, to be held 'for ever as part of the said churchyard or burial 'place:'

And every such conveyance shall be valid and effectual in the law to all intents and purposes.

Deed of gift, &c. not to be subject to stamp duty.

6. *And whereas by the Act of the fifty-ninth year of George the Third, intituled "An Act to amend and render more effectual an Act passed in the last Session of Parliament, for building and promoting the building of additional Churches in populous Parishes," and by another Act of the*

third year of George the Fourth, intituled "An Act to amend and render more effectual two Acts passed in the fifty-eighth and fifty-ninth years of his late Majesty, for building and promoting the building of additional Churches in populous parishes," the commissioners for managing the duties upon stamped vellum, parchment, and paper are authorised to allow the full amount of stamp duties upon instruments made in relation to the said recited Acts; and it is expedient to make further provisions in relation to such stamp duties: Be it therefore enacted, that no deed of gift, or grant, security, contract, agreement, deed, or conveyance, or other instrument made for the purposes of this Act, or for the carrying into execution any of the powers, authorities, or provisions of this Act, shall be subject to any of the duties upon stamped vellum, parchment, or paper, anything in any Act or Acts of Parliament to the contrary notwithstanding. 30 & 31 Vict. c. 133.

The words in italics were repealed by the Statute Law Revision Act, 1893.

Application of the provisions of Act of 3 Geo. IV. c. 72, s. 29 to lands so added.

7. From and after the expiration of five years after the conveyance of any lands or hereditaments for such addition to any churchyard or burial place and the inclosure of the same within one boundary fence, although the same shall not have been consecrated and although no burial shall have been had within the same during that period of time, the said lands and hereditaments shall, for the purposes of this Act, become and be and remain absolutely vested in the person or persons or corporation in whom the churchyard or burial place to which they are added is vested, free from all demand or claim of any person or persons or corporation whatsoever, and without being thereafter subject to any question as to any right, title, or claim thereto, or in any manner affecting the same.

30 & 31 Vict. c. 133.

Saving provisions of former Acts.

8. Except as is by this Act expressly enacted, nothing therein contained shall affect the provisions of any Act of Parliament with reference to lands or hereditaments conveyed as sites for churchyards or to the conveyances thereof.

Exclusive right of burial in a portion of the land added to a churchyard may be secured to the giver thereof.

9. Whenever any land shall be so added to a consecrated churchyard, and such land shall have been the gift of any person whether resident or not in the parish or ecclesiastical district in which such churchyard is situated, it shall be lawful for the giver of such land to reserve the exclusive right in perpetuity of burial and of placing monuments and gravestones in a part of the land so added, not exceeding *fifty square yards or* one sixth of the whole of the said land, and the part in which such exclusive right is reserved shall be shown and coloured on the plan endorsed on the instrument declaring or recording the consecration of the land added to the churchyard; and a memorandum in the form following shall be written on the said instrument, and signed by the incumbent and churchwardens of the parish or ecclesiastical district in which the same is situated:

We, *A.B.*, [Rector, Vicar, *or* Incumbent,] and *C.D.* and *E.F.*, Churchwardens, of , declare the piece of land [*here insert the description and measurement*], and coloured on this plan, to be the burial place of *G.H.*, the giver of the land added to the churchyard of his heirs and assigns.

Signed *A.B.*,
C.D.,
E.F.,
in the presence of *J.K.*

Dated this day of .

And the memorandum so signed shall, after such

land shall have been declared to have been consecrated, operate as an exclusive right in perpetuity in the land therein referred to, and the expenses of preparing and executing such memorandum shall be borne by the person by whom the reservation is made. 30 & 31 Vict. c. 133.

The words in italics were in effect repealed by the 31 & 32 Vict. c. 47, s. 1, *infra*.

Conditions attending such grant of exclusive right of burial.

10. The exclusive right of burial and of placing monuments and gravestones as aforesaid shall be considered to be the real estate of the giver, his heirs and assigns, and no body shall be buried or monument or gravestone placed in the land in which such rights have been granted, except by consent of the owner thereof for the time being, but no such reservation shall give the right to bury the body of any person not entitled to be buried in consecrated ground, and the bishop of the diocese, and all persons acting under his authority, shall have the same right and powers to object to the placing and to procure the removal of any monumental inscription within the ground so reserved as he has to object to or procure the removal of any monumental inscription in any consecrated ground: Provided always, that the consent of the owner for the time being shall not be required for the burial of a deceased owner or of a wife or widow of any deceased owner who has been buried or shall be about to be buried in such ground.

As to closing of reserved portion.

11. Such reserved portion shall not be included in any order in council under the Burial Acts for closing the churchyard to which it belongs, but it may be closed under a separate order founded on a special report that the ground is in such a state as to render any further interments therein prejudicial to the public.

Where communion table

12. *And whereas doubts are entertained whether in cases where a church or chapel has been rebuilt, repaired,*

30 & 31 Vict. c. 133.

has been moved, or walls of church have been partly demolished, marriages, &c. to be valid, although the church be not reconsecrated or reconciled.

or enlarged, and the external walls have been partly destroyed, or the position of the communion table altered, a reconsecration of such church or chapel be not necessary in order to the due and valid administration of divine offices there: Be it declared and enacted, that all marriages, rites, and ceremonies hereto or hereafter celebrated or performed in a consecrated church or chapel which may have been rebuilt, repaired, or enlarged prior to such celebration or performance, and wherein such marriages, rites, and ceremonies might have been legally solemnised or performed previously to such rebuilding, repair, or enlargement, shall be valid and effectual for all purposes, notwithstanding that upon such repair or enlargement the external walls of such church or chapel may not have remained entire, or the position of the communion table may have been altered, and notwithstanding that since such rebuilding, repair, or enlargement no reconsecration of such church or chapel may have taken place.

The words in italics were repealed by the Statute Law Revision Act, 1893.

Short title.

13. This Act may be cited as the Consecration of Churchyards Act, 1867.

31 & 32 Vict. c. 47.

31 & 32 VICT. C. 47.

An Act to amend "The Consecration of Churchyards Act, 1867." [13th July, 1868.]

30 & 31 Vict. c. 133.

WHEREAS it is expedient that the Consecration of Churchyards Act, 1867, *should be amended as hereinafter mentioned:*

Be it enacted by the Queen's most excellent Majesty, by

and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows: 31 & 32 Vict. c. 47.

By the Short Titles Act, 1896, this Act may be cited as the Consecration of Churchyards Act, 1868.

The preamble was repealed by the Statute Law Revision Act, 1893.

Giver of land may reserve exclusive right to extent of one sixth.

1. That in all cases where by the said Act the giver of any land to be added to a consecrated churchyard is empowered to reserve the exclusive right in perpetuity of burial, and of placing monuments and gravestones, in a part of the land so added not exceeding fifty square yards or one sixth of the whole of the said land, in the manner and subject to the conditions and restrictions in the said Act mentioned, it shall be lawful for the giver of such land to reserve such exclusive right as aforesaid in a part of the land so added not exceeding one sixth of the whole of the said land, subject to the restrictions and conditions and in the manner and for the purposes in the said Act mentioned, and the said Act shall be read as if in the ninth section thereof the words "not exceeding one sixth part of the whole of the said land" were substituted for the words "not exceeding fifty square yards or one sixth of the whole of the said land:" Provided always, that all powers with regard to the placing or erection of monuments and gravestones in churchyards which before the passing of the said Act by law pertained to the bishop of the diocese, or to any person acting under his authority, shall remain in full force in respect to the land in which such exclusive right shall have been reserved as aforesaid.

Recited Act to apply to burial grounds to unions.

2. The provisions of the said Act shall apply to burial grounds attached or belonging to union houses in England and Wales.

DISUSED BURIAL GROUNDS.

40 & 41 Vict. c. 35.

40 & 41 VICT. C. 35.

An Act for affording facilities for the enjoyment by the Public of Open Spaces in the Metropolis.

[2nd August, 1877.]

WHEREAS it is expedient to afford facilities for making available the open spaces in and near the metropolis for the use of the inhabitants for exercise and recreation, and to enable the Metropolitan Board of Works to acquire the control and management of such open spaces for such purposes:

Be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Metropolitan Board of Works may acquire and hold open spaces for benefit of public.

1. The Metropolitan Board of Works may, by purchase on voluntary sale, or by the gift of the person or persons legally entitled to dispose of the same, acquire or accept the ownership of any open spaces, whether inclosed within rails or palings, or uninclosed, situated in the metropolis, and hold the same in trust for the perpetual use thereof by the public for exercise and recreation, and may from time to time make bye-laws for the regulation of such open spaces, and may by such

bye-laws provide for the removal of any person infringing any such bye-law by any officer of the said board or police constable. Bye-laws under this section shall be made in the same manner and subject to the same conditions as bye-laws made by the said board under the Metropolis Management Act, 1855. 40 & 41 Vict. c. 35. 18 & 19 Vict. c. 120.

By s. 40, sub-s. 8 of the Local Government Act, 1888 (51 & 52 Vict. c. 41), the powers, duties, and liabilities of the Metropolitan Board of Works are transferred to the London County Council, which, therefore, must be read wherever the Metropolitan Board of Works occurs in this Act.

By s. 5 of 50 & 51 Vict. c. 32, all the sections of this Act except ss. 4, 5, 6, 7, and 8, are extended to urban and certain rural sanitary districts (see *infra*, p. 424).

As to the power of limited owners to convey sites for open spaces, see the Settled Land Act, 1882, s. 16 (45 & 46 Vict. c. 38).

2. Where any open spaces now are or hereafter may be used as places of exercise and recreation for the inhabitants of certain houses, and the property and right of user is now or hereafter may be vested in one or more persons as owners or occupiers of such houses, such owners and occupiers (if any) may convey to the Metropolitan Board of Works, in trust for the public, the right to enter upon and use and enjoy such open spaces, subject to such terms and conditions as may be agreed upon. Right of entry to places of recreation may be conveyed to Metropolitan Board of Works.

The provisions of the Metropolis Management Act, 1855, as to bye-laws are contained in ss. 202 and 203. These sections give power to make bye-laws imposing reasonable penalties not exceeding forty shillings for their breach, or in case of a continuing offence, twenty shillings for each day after notice of the offence. Under such bye-laws the justices before whom it is sought to recover the penalties may order the whole or part only of the penalty to be paid, or may remit the whole. No bye-law is to be repugnant to the laws of England or to the provisions of that Act. No bye-law is to be of any force or

40 & 41 Vict. c. 35.

effect unless or until the same shall be submitted to and confirmed at a subsequent meeting of the board. No penalty is to be imposed by any such bye-law unless approved by a secretary of state. Bye-laws are to be printed and hung up in the principal office of the board and be open to public inspection without payment, and copies thereof are to be delivered to any person applying for the same at a price not exceeding twopence. When published they are binding on and to be observed by all parties, and are to be sufficient to justify all parties acting under them. Production of the printed copy is to be sufficient evidence in prosecutions under them of their existence and of their being duly made.

Provision for keeping up open spaces.

3. The Metropolitan Board of Works shall be entitled to make such provision as may be necessary for maintaining and protecting the open spaces so acquired by them.

Expenses.

4. The Metropolitan Board of Works shall be empowered to pay out of the funds at their disposal or which they are empowered to raise under the said 18 & 19 Vict. c. 120. Metropolis Management Act, 1855, and the several Acts amending the same, the costs and charges which they may incur in the execution of this Act, and such costs and charges shall be deemed to be expenses for which provision is made by such Acts.

Extent of Act.

5. This Act shall not extend to the royal parks, nor to any land belonging to Her Majesty in right of her crown or of her Duchy of Lancaster, or any garden, ornamental ground, or ornamental land for the time being under the management of the Commissioners for the time being of Her Majesty's Works and Public Buildings or of the Commissioners for the time being acting under the Crown Estate Paving Act, 1851, or to any metropolitan common within the meaning of "The Metropolitan Commons Act, 1866," and "The Metropolitan Commons Amendment Act, 1869," nor to any

14 & 15 Vict. c. 95.
29 & 30 Vict. c. 122.
32 & 33 Vict. c. 107.

land belonging to either of the honourable Societies of the Inner Temple and Middle Temple. 40 & 41 Vict. c. 35.

6. The term "metropolis" in this Act means all parishes and places mentioned in Schedules A., B., and C. to the said Metropolis Management Act, 1855. Meaning of term "metropolis."

7. The powers in this Act conferred on the Metropolitan Board of Works shall in the city of London be exercised by the mayor, aldermen, and commons of the said city, who shall defray all the expenses caused by or connected with the execution of such powers. In the City of London the powers of the Act to be executed by the Corporation.

8. This Act may be cited as the Metropolitan Open Spaces Act, 1877. Short title.

By s. 1 of 53 & 54 Vict. c. 15, repeated by the Short Titles Act, 1896, the Metropolitan Open Spaces Acts, 1877 and 1881, and the Open Spaces Acts, 1887 and 1890, may be cited collectively as the Open Spaces Acts, 1877 to 1890.

44 & 45 VICT. C. 34.

44 & 45 Vict. c. 34.

An Act to amend the Metropolitan Open Spaces Act, 1877.

[11th August, 1881.]

WHEREAS by the Metropolitan Open Spaces Act, 1877, certain facilities were provided for making available the open spaces in the metropolis for the use of the inhabitants thereof for exercise and recreation, and it is expedient to amend and extend the said Act, and to provide greater facilities for the purpose aforesaid: 40 & 41 Vict. c. 35.

By s. 5 of 50 & 51 Vict. c. 32, *post*, p. 424, all the provisions of this Act, except so much of s. 6 as begins with the words "bye-laws made under this Act" and ends with the figures 1855, and also except ss. 10, 11, 12, and 13, are extended to urban and certain rural sanitary districts.

44 & 45 Vict. c. 34.

Be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Interpretation clause.

1. In this Act, unless the context otherwise requires—

"Open space" means any land (whether inclosed or uninclosed) which is not built on, and which is laid out as a garden or is used for purposes of recreation, or lies waste and unoccupied; *but shall not include any inclosed land which has not a public road or footpath completely round the same;*

The words in italics are repealed by 50 & 51 Vict. c. 32, s. 2, and Schedule, *post*, p. 421.

By s. 7 of 53 & 54 Vict. c. 15, *post*, p. 432, where a portion of an area of land not exceeding a twentieth part is covered with a building or buildings, such land may be deemed an open space.

18 & 19 Vict. c. 120.

"The metropolis" means the metropolis as defined by the Metropolis Management Act, 1855;

By s. 250 of the Metropolis Management Act, 1855, the metropolis is to be deemed to include the City of London and the parishes and places mentioned in Schedules (A.), (B.), and (C.) to that Act.

"The Metropolitan Board" means the Metropolitan Board of Works as constituted by the same Act;

By s. 40, sub-s. 8 of the Local Government Act, 1888, the powers, duties, and liabilities of the Metropolitan Board of Works are transferred to the London County Council.

"Vestry" means a vestry of one of the parishes specified in Schedule A. of the same Act;

"District board" means a board of works of one of the districts specified in Schedule B. of the same Act;

"The corporation" means the mayor and commonalty and citizens of the city of London, and the powers

conferred upon them by this Act may be exercised by the mayor, aldermen, and commons of the said city in common council assembled; 44 & 45 Vict. c. 34.

The "owner" of a churchyard, cemetery, or burial ground means the person or persons, corporation sole, or body corporate in whom the soil and freehold of such churchyard, cemetery, or burial ground is vested, whether as appurtenant or incident to any benefice or cure of souls, or otherwise.

The term "burial ground" shall include any ground, whether consecrated or not, which has been at any time set apart for the purposes of interment, *and in which interments have taken place since the year 1800.*

The words in italics are repealed by 50 & 51 Vict. c. 32, s. 2, *post*, p. 421.

As to the meaning of the words "set apart for purposes of interment," see *In re Ponsford and Newport District School Board*, ([1894] 1 Ch. 454; 63 L. J. Ch. 278; 70 L. T. N. S. 502; 42 W. R. 358), in which case it was held that a part of a cemetery where burials had never taken place came within the words.

Power to trustees to transfer certain open spaces to local authority.

2. Where any open space within the metropolis is under the provisions of any private or local Act of Parliament placed under the care and management of trustees or other persons, with a view to the preservation and regulation of the same as a garden or open space, it shall be lawful for the said trustees or other the managing body thereof for the time being, in pursuance of any resolution duly passed as hereinafter mentioned, and with the consent, to be signified in manner hereinafter appearing, of the owners and occupiers of any houses fronting upon, or the owners or occupiers of which are liable to be specially rated for the maintenance of the open space, to convey, assign, or transfer for valuable or nominal consideration, or by way of gift, to the

44 & 45 Vict. c. 34.

Metropolitan Board, or to the vestry or district board of the parish or district in which such open space or any part thereof is situate, the soil and freehold of, or other their entire interest in, or (where no interest in the soil of such open space is vested in them) the entire care and management of the said open space, to the end that the same may be preserved for the enjoyment of the public; and upon such conveyance, assignment, or transfer such trustees or other managing body shall be relieved and discharged from all trusts, powers, and duties imposed upon them by the Act or other instrument under which they were constituted, or under which they then act or otherwise with reference to the said open space, but shall hold any purchase money paid for or in respect of the said open space in trust for the benefit of the persons or class of persons for whose benefit the said open space was previously preserved and managed by the said trustees, and such persons or class of persons shall be discharged from any special rate or other obligation previously imposed on them in respect of such open space.

It shall be lawful for any such trustees or managing body as aforesaid, in pursuance of any such resolution as aforesaid, and with such consent as aforesaid, for any valuable or nominal consideration, by way of rent or otherwise, or without any consideration, to grant or transfer to the Metropolitan Board, or to any such vestry or district board as aforesaid, any term of years or other limited interest in or any right or easement over such open space, or to enter into any agreement with the Metropolitan Board or any such vestry or district board as aforesaid for the opening to the public of such open space, and the care and management thereof by such board or vestry at all times or at any

specified time or times, without the transfer to such board or vestry of any interest in the soil of such open space; and any such grant, demise, transfer, or agreement as aforesaid shall be deemed a good execution of the trusts, powers, and duties imposed upon the said trustees by the Act or other instrument under which they are constituted or act. 44 & 45 Vict. c. 34.

A resolution under this section shall be deemed to have been duly passed if at a meeting of the trustees or other the persons constituting such managing body as aforesaid, summoned by at least one month's notice in writing left at or sent by post to their last known or usual place of abode, such resolution shall have been passed by a majority of two thirds in number of the persons present at such meeting, and if such resolution shall also have been confirmed by two thirds in number of the persons present at a second like meeting, to be summoned by such notice as aforesaid, and to be held at an interval of not less than one calendar month from the first meeting.

The consent of such owners and occupiers of houses as aforesaid shall be held to have been given and signified if, at a meeting of such persons summoned by at least one month's notice in writing given as hereinafter directed, a resolution shall have been passed by a majority of at least two thirds in number of the persons present at such meeting consenting to the conveyance, grant, or transfer of the said open space as aforesaid, or to such an agreement with the Metropolitan Board, vestry, or district board as aforesaid; and if such resolution shall also have been confirmed by two thirds in number of such owners and occupiers present at a second like meeting, to be summoned in like manner to the first meeting, and to be held at an interval

44 & 45 Vict. c. 34.

of not less than one calendar month from the first meeting.

Notice of such meeting shall be given by leaving the same or sending the same through the post to every house fronting upon, or the owner or occupier of which is liable to be specially rated for the maintenance of, the said open space, and by inserting the same as an advertisement at least three times in any two or more London daily papers, and such notice shall state generally the object of the said meeting, and no such meeting shall be held between the first day of August in one year and the thirty-first day of January in the following year.

For the purposes of this section the owner of a house shall include any person entitled to any term of years therein; and the occupier of a house shall be the person rated to the relief of the poor in respect of the said house.

If at any meeting of such trustees or managing body, or at any meeting of such owners or occupiers as before mentioned, the resolution proposed at any such meeting be not carried, no meeting shall be called or held with the same object in respect to the same garden or open space until the expiration of three years from the day on which such resolution so proposed was rejected at any such meeting as above mentioned.

A conveyance, assignment, demise, grant, or agreement under this section shall be made by an instrument under the common seal of the trustees or other managing body if such body be a corporation, and if it be not a corporation under the hands and seals of any five members of such body, or of all the members thereof if for the time being they be less than five in number.

The trustees or other the managing body of any such

open space as aforesaid may (anything contained in the Act or other instrument under which they are constituted or act to the contrary notwithstanding), in pursuance of any such resolution as aforesaid, and with such consent as aforesaid, signified as aforesaid, admit persons not owning, occupying, or residing in any house fronting on the said open space to the enjoyment of the said open space at all times, or at any specified time or times, and may regulate the admission of such persons thereto on such terms and conditions in all respects as the trustees may think proper. 44 & 45 Vict. c. 34.

Any trustees so acting as aforesaid shall have the same power of making bye-laws as that conferred by the fourth section of the Act passed in the twenty-sixth year of Her Majesty, chapter thirteen, intituled "An Act for the Protection of certain Garden or Ornamental Grounds in Cities and Boroughs upon the committee therein mentioned" (*sic*).

Where the freehold of any such open space as is referred to in this section, and the freehold of all or of the major part of the houses round such open space are vested in the same person or persons, the powers conferred by this section shall not be exercised without the consent of such person or persons.

This section is amended by 50 & 51 Vict. c. 32, s. 2, *post*, p. 421, which provides that the purchase money paid for or in respect of the purchase of any open space as herein mentioned shall be held in trust either as in this section mentioned, or as the case may be for the benefit of the objects to which any rates previously imposed in respect of such open space had been applied.

26 & 27 Vict. c. 13, s. 4, provides that "where any such garden or ground is managed by any committee of the inhabitants of any square, &c. . . . such committee may make and from time to time revoke and alter bye-laws for the manage-

44 & 45 Vict. c. 34.

ment of the same, and for the preservation of the trees, shrubs, plants, flowers, rails, fences, seats, summer-houses, and other things therein, which bye-laws shall be entered in a book kept for that purpose by the committee, signed by the chairman of the meeting at which the same shall be passed, and which book shall and may be produced and read, and taken as evidence of such bye-laws, in all courts whatever; and any inhabitant, or servant or other person admitted to such garden by any inhabitant, offending against the same, after they shall have been duly allowed as thereinafter provided, upon proof thereof before a magistrate acting for the district in which such garden is situate, shall be liable for each offence to a penalty not exceeding five pounds; provided always that such bye-laws shall not come into operation until the same shall have been allowed by some judge of one of the superior courts or by the justices in quarter sessions; and it shall be incumbent on such judge or justices at the request of such committee to inquire into any bye-laws tendered to them for that purpose, and to allow or disallow the same as they think meet."

Power to transfer other open space to local authority.

3. The owner of any open space within the metropolis which is subject to rights of user for exercise and recreation (secured by covenant or otherwise) in the owners and occupiers (or either of such classes) of any houses round or near the same may, with the consent (to be signified in manner hereinafter appearing) of such owners and occupiers of houses, convey to the Metropolitan Board, or to the vestry or district board of the parish or district in which such open space or any part thereof is situate, the soil of the said open space in trust for the enjoyment of the public; and the owner or any person or persons in whom any term of years or other limited interest in such open space is vested may, with the like consent, grant or transfer to the Metropolitan Board or such vestry or district board as aforesaid, in trust as aforesaid, any term of years or other limited interest in or any right or easement over

such open space, or enter into any agreement with the Metropolitan Board or any such vestry or district board as aforesaid for the opening to the public of such open space, and the care and management thereof by such board or vestry either at all times or at any specified time or times without the transfer to such board or vestry of any interest in the soil of such open space. 44 & 45 Vict. c. 34.

The consent of such owners and occupiers of houses as aforesaid shall be held to have been given and signified if at a meeting of such persons summoned by at least one month's notice in writing (given as hereinafter directed) a resolution shall have been passed by a majority of at least two thirds in number of the persons present at such meeting consenting to the conveyance, grant, or transfer of the said open space as aforesaid, or to such an agreement with the Metropolitan Board, vestry, or district board as aforesaid, and the owner shall be thereupon discharged from any liability to any person entitled to such right of user as aforesaid in respect of any act done in accordance with such resolution.

Notice of such meeting shall be given by leaving the same or sending the same through the post to every house, the owner or occupier of which is entitled to any right of user, and by inserting the same as an advertisement at least three times in any two or more London daily papers, and such notice shall state generally the object of the said meeting; and no such meeting shall be held between the first day of August in one year and the thirty-first day of January in the following year.

For the purposes of this section the owner of an open space shall be any person or persons in whom the soil of the open space is vested for an estate in possession during his or their life or lives or for any larger estate;

44 & 45 Vict. c. 34.

the owner of a house shall include any person entitled to any term of years therein; and the occupier of a house shall be the person rated to the relief of the poor in respect of the said house.

Power to transfer disused burial grounds to local authority.

4. The owner of any churchyard, cemetery, or burial ground situate within the metropolis, and closed for burials either under an order of Her Majesty the Queen in council, or otherwise, may convey the soil of such churchyard, cemetery, or burial ground, or grant any term of years or other limited interest therein to or enter into any agreement with the Metropolitan Board or the vestry or district board of the parish or district in which such churchyard, cemetery, or burial ground, or any part thereof, is situate for the purpose of giving the public access to the said churchyard, cemetery, or burial ground, and preserving the same as an open space accessible to the public, and under the control of such board or vestry, and for the purpose of improving and laying out the same.

Powers and duties of local authority.

5. The Metropolitan Board and the vestry or district board of the parish or district within which any open space, churchyard, cemetery, or burial ground, or any part thereof, is situate may, by agreement, and for valuable or nominal consideration by way of payment in gross or of rent, or otherwise, or without any consideration, take and hold the soil and freehold of, or any term of years or other limited estate or interest in, or any right or easement in or over any open space, churchyard, cemetery, or burial ground, and may, with reference to any open space, churchyard, cemetery, or burial ground, undertake the entire or partial care, management, and control thereof, whether any interest in the soil is transferred to the board or vestry or not, and may for the purposes aforesaid enter into any

agreement with the persons authorised by this Act to agree with reference to any open space, churchyard, cemetery, or burial ground or with any other persons interested therein. 44 & 45 Vict. c. 34.

Any estate or interest in or control over any open space, churchyard, cemetery, or burial ground acquired by the Metropolitan Board, or any vestry or district board under the provisions of this Act, shall be held and administered by such board or vestry in trust to allow, and with a view to, the enjoyment by the public of such open space, churchyard, cemetery, or burial ground in an open condition, free from buildings and under proper control and regulation, and for no other purpose, *but such Metropolitan Board, vestry, or district board shall not allow the playing of any games or sports therein;* and the board or vestry shall maintain and keep the same in a good and decent state, and may inclose or keep the same inclosed with proper railings and gates, and may drain, level, lay out, turf, plant, ornament, light, seat, and otherwise improve the same, and do all such works and things, and employ such officers and servants, as may be requisite for the purposes aforesaid, or any of them.

Provided that no board or vestry shall exercise any of the powers of management in this Act mentioned with reference to any consecrated ground, unless and until they are authorised so to do by the license or faculty in that behalf of the bishop of the diocese in which such consecrated ground is situate, which license or faculty may be granted by such bishop upon the application of the board or vestry, and may extend to the removal of any tombstone or monument, under such conditions and subject to such restrictions as to the bishop may seem fit.

44 & 45 Vict. c. 34.

The words in italics are repealed by 50 & 51 Vict. c. 32, s. 2, *post*, p. 421, and the provisions of s. 2, sub-s. 2 of that Act are substituted for them.

Section 3 of 50 & 51 Vict. c. 32, *post*, p. 422, puts restrictions on, and prescribes the procedure for, obtaining leave for the removal of tombstones and monuments.

Before the passing of this Act closed churchyards had been sometimes allowed to be converted into open spaces accessible to the public (*Re the Rector and Churchwardens of St. George's in the East*, [1876] 1 P. D. 311). Whether a faculty for such a purpose could be legally granted seems open to question (*In re Plumstead Burial Ground*, [1895] P. 225).

Where under this section a faculty had been decreed to issue allowing a churchyard closed for burials and containing two private vaults, one in repair and the other out of repair, to be laid out as a public garden subject to future order as to how such vaults should be dealt with, the Court made an order that there should be no interference with the vault in repair, but that the vault out of repair should be levelled with the ground and filled up (*Vicar and Churchwardens of St. Botolph's Without Aldgate* v. *Parishioners of the Same*, [1892] P. 173).

Bye-laws.

6. The Metropolitan Board and any vestry or district board may, with reference to any open space, churchyard, cemetery, or burial ground in or over which it has acquired any estate, interest, or control under the provisions of this Act, make bye-laws for the regulation thereof, and of the days and times of admission thereto, and the preservation of order and prevention of nuisances therein, and may by such bye-laws impose penalties for the infringement thereof, and provide for the removal of any person infringing any such bye-law by any officer of the board or vestry or police constable.

Bye-laws made under this Act shall be made in the same manner and subject to the same conditions as bye-laws made by the Metropolitan Board or by a vestry

or district board, as the case may be, under the Metropolis Management Act, 1855. 44 & 45 Vict. c. 34.

See the notes to s. 1 of 40 & 41 Vict. c. 35, *ante*, p. 401.

Metropolitan Board and vestry or district board may carry out Act jointly.

7. The Metropolitan Board or any vestry or district board, and where an open space extends into two or more parishes or districts two or more vestries or district boards, either with or without the Metropolitan Board, may jointly carry out the provisions of this Act, and may enter into any agreement, on such terms as may be arranged between them, for so doing and for defraying the expenses of the execution of the Act, and the Metropolitan Board may defray the whole or any part of the expenses of the execution of this Act by any vestry or district board, and any vestry or district board may similarly defray the whole or any part of the expenses of the Metropolitan Board or, where an open space extends into two or more parishes or districts, of any other vestry or district board.

Provision for extra-parochial places.

8. Where any open space, churchyard, cemetery, or burial ground, by virtue of any Act of Parliament or otherwise, is extra-parochial, or forms part of some parish other than that which surrounds the same, the vestry or district board acting for the parish surrounding the same may carry out, or may enter into agreement with any one or more vestries or district boards acting for any other parishes, on such terms as may be arranged between them, and may jointly carry out, the provisions of this Act, and shall have the same powers in every respect as if such open space, churchyard, cemetery, or burial ground were part of the parish or district of such vestry or district board.

Provision for compensation.

9. No estate, interest, or right of a profitable or beneficial nature in, over, or affecting an open space, church-

44 & 45 Vict. c. 34.

yard, cemetery, or burial ground shall, except with the consent of the body or person entitled thereto, be taken away or injuriously affected by anything done under this Act without compensation being made for the same; and such compensation shall be paid by the Metropolitan Board, vestry, or district board by which such estate, interest, or right is taken away or injuriously affected, and shall, in case of difference, be ascertained and provided in the same manner as if the same compensation were for the compulsory purchase and taking or the injurious affecting of lands under the provisions of the 8 & 9 Vict. c. 18. Lands Clauses Consolidation Act, 1845, and any Acts amending the same.

The provisions of the Lands Clauses Consolidation Act, 1845, are set out *post*, p. 721.

Expenses.

10. All expenses incurred under this Act by the Metropolitan Board or by any vestry or district board shall be defrayed out of the funds at their disposal respectively, or which they respectively are empowered to raise under the Metropolis Management Act, 1855, and the several Acts amending the same; and such expenses shall be deemed to be expenses for which provision is made by such Acts.

Extent of Act.

11. This Act shall extend only to the metropolis, and shall not extend to the royal parks or to any land belonging to Her Majesty in right of her Crown or of her Duchy of Lancaster, or to any garden, ornamental ground, or ornamental land for the time being under the management of the Commissioners for the time being of Her Majesty's Works and Public Buildings or of the 14 & 15 Vict. c. 95. Commissioners for the time being acting under the Crown Estate Paving Act, 1851, or to any metropolitan 29 & 30 Vict. c. 122. common within the meaning of the Metropolitan

Commons Act, 1866, and the Metropolitan Commons Amendment Act, 1869. 44 & 45 Vict. c. 34.

12. The powers in this Act conferred on and in relation to the Metropolitan Board, vestries, and district boards shall in the city of London be exercised by and have relation to the corporation, who shall defray, out of the metage of grain duty or otherwise, all the expenses caused by or connected with the execution of such powers by them; and any bye-laws made by the corporation for the regulation of any open space acquired under the powers of this Act shall be made and allowed in manner prescribed by the Corporation of London (Open Spaces) Act, 1878. 32 & 33 Vict. c. 107. Application in city of London. 41 & 42 Vict. c. cxxvii.

13. This Act may be cited as the Metropolitan Open Spaces Act, 1881; and this Act and the Metropolitan Open Spaces Act, 1877, may together be cited as the Metropolitan Open Spaces Acts, 1877 and 1881. Short title.

See note to s. 8 of 40 & 41 Vict. c. 35, *ante*, p. 403.

47 & 48 VICT. C. 72.

47 & 48 Vict. c. 72.

An Act for preventing the erection of Buildings on Disused Burial Grounds. [14th August, 1884.]

WHEREAS an Act was passed in the session of Parliament holden in the fifteenth and sixteenth years of Her Majesty, chapter eighty-five, to amend the laws concerning the burial of the dead in the metropolis, and an Act was passed in the session holden in the sixteenth and seventeenth years of Her Majesty, chapter one hundred and thirty-four, "to amend the laws concerning

47 & 48 Vict. c. 72.

the burial of the dead in England, beyond the limits of the metropolis, and to amend the Act concerning the burial of the dead in the metropolis": And whereas in pursuance of the provisions of the above recited Acts numerous orders in council have been made for the discontinuance of burials in certain burial grounds within the metropolis and elsewhere: And whereas it is expedient that no buildings should be erected on any burial ground affected by any of such orders in council:

Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Short title.

1. This Act may be cited as the Disused Burial Grounds Act, 1884.

Interpretation clause.

2. In this Act a "disused burial ground" shall mean a burial ground in respect of which an order in council has been made for the discontinuance of burials therein in pursuance of the provisions of the said recited Acts.

By s. 4 of 50 & 51 Vict. c. 32, *post*, p. 423, in this Act the expression "burial ground" shall have the same meaning as in the Metropolitan Open Spaces Act, 1881 (*ante*, p. 405), as amended by that Act, and the expression "disused burial ground" shall mean any burial ground which is no longer used for interments, whether or not such ground shall have been partially or wholly closed for burials under the provisions of any statute or order in council, and the expression "building" shall include any temporary or movable building.

No buildings to be erected upon disused burial grounds, except for enlargement, &c.

3. After the passing of this Act it shall not be lawful to erect any buildings upon any disused burial ground, except for the purpose of enlarging a church, chapel, meeting-house, or other places of worship.

Before the passing of this Act faculties had, with the consent of the incumbent and a majority of the parishioners, been

granted for the erection in churchyards of buildings, such as schools (*Russell* v. *Parish of St. Botolph*, [1859] 5 Jur. N. S. 300; *Re Bettison*, [1874] L. R. 4 Adm. & Ecc. 294), or mortuaries (*Hansard* v. *St. Matthew, Bethnal Green*, [1878] 4 P. D. 46; *Burial Board of St. George's, Hanover Square*, v. *Hall* [1879] 5 P. D. 42); or a vestry (*Campbell* v. *Parishioners of Paddington*, [1852] 2 Rob. Ecc. 538), but a faculty for erecting a school without such consent has been refused (*Rector of St. George's, Hanover Square*, v. *Stewart*, 2 Str. 1126). See Introduction, *ante*, pp. 10, 42.

In *Att.-Gen.* v. *St. Pancras Vestry*, [1893] 69 L. T. N. S. 627, it was held that a band-stand came within this section as extended by 50 & 51 Vict. c. 32, s. 4.

In the case of *In re Ponsford and Newport District School Board*, ([1894] 1 Ch. 454; 63 L. J. Ch. 278; 70 L. T. N. S. 502; 42 W. R. 358), it was held that under the combined operation of the Metropolitan Open Spaces Act, 1881, s. 1, *ante*, p. 404, s. 2 of this Act, and the Open Spaces Act, 1887, ss. 2 and 4, *post*, pp. 421–3, a disused burial ground means any ground, whether consecrated or not, which has been at any time set apart for purposes of interment, whether interments have taken place in it or not, and which has been partially or wholly closed under the provisions of any statute or order in council, or has become otherwise disused, and that the prohibition in this section extends to building on a part of a cemetery never used for burial.

The site of a church where intramural burial has taken place is not within the definition in those Acts of disused burial grounds, and therefore the prohibition in this section does not apply thereto (*In re Ecclesiastical Commissioners and New City of London Brewery Company's Contract*, [1895] 1 Ch. 702; 64 L. J. Ch. 646; 72 L. T. N. S. 481; 43 W. R. 457; 13 R. 409).

Saving for buildings already sanctioned.

4. Nothing in this Act shall prevent the erection of any building on a disused burial ground for which a faculty has been obtained before the passing of this Act.

See note to the last section as to obtaining a faculty for building on a disused burial ground.

47 & 48 Vict. c. 72.

Saving of burial grounds sold by Act of Parliament.

5. Nothing in this Act contained shall apply to any burial ground which has been sold or disposed of under the authority of any Act of Parliament.

This section has been held to apply to sales or dispositions made either before or after the passing of the Act (*In re Ecclesiastical Commissioners and New City of London Brewery Company's Contract*, [1895] 1 Ch. 702, explaining *Trustees of St. Saviour's Rectory* v. *Oyler*, [1886] 31 Ch. D. 412; *Att.-Gen.* v. *The Trustees of the London Parochial Charities*, [1896] 1 Ch. 541; 74 L. T. N. S. 184; 65 L. J. Ch. 242; 44 W. R. 395).

50 & 51 Vict. c. 32.

50 & 51 VICT. C. 32.

An Act for extending certain provisions of the Metropolitan Open Spaces Acts, 1877 and 1881, with Amendments, to Sanitary Districts throughout England, Wales, and Ireland; and for other purposes.

[23rd August, 1887.]

40 & 41 Vict. c. 35. 44 & 45 Vict. c. 34.

WHEREAS by the Metropolitan Open Spaces Acts, 1877 and 1881 (herein called the principal Acts), certain facilities were provided for making available the open spaces and burial grounds in the metropolis for the use of the inhabitants thereof for exercise and recreation, and it is expedient to provide facilities for making available open spaces and burial grounds in all sanitary districts in England, Wales, and Ireland, for the like use of the inhabitants thereof, and to make other provisions for the purpose aforesaid, and also to amend the

47 & 48 Vict. c. 72.

Metropolitan Open Spaces Act, 1881, and the Disused Burial Grounds Act, 1884:

Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows : 50 & 51 Vict. c. 32.

1. In this Act, unless the context otherwise requires, the expression "urban sanitary district" and the expression "urban authority" respectively, and the expressions "rural sanitary district" and "rural authority" respectively shall have the meanings assigned to them respectively by the Public Health Act, 1875. Interpretation. 38 & 39 Vict. c. 55.

The expressions here referred to are contained in ss. 6 and 9 of the Public Health Act, 1875, set out *infra*, p. 691.

2.—(1.) The Metropolitan Open Spaces, 1881, is hereby repealed to the extent mentioned in the Schedule to this Act, and the second section of the said Act is hereby amended, as follows (that is to say), the purchase money paid for or in respect of the purchase of any open space as therein mentioned shall be held in trust, either as in the said section mentioned, or as the case may be, for the benefit of the objects to which any rates previously imposed in respect of such open space had been applied. Amendment of 44 & 45 Vict. c. 34.

(2.) The playing of any games or sports shall not be allowed in any churchyard, cemetery, or burial ground in or over which any estate, interest, or control is acquired under section five of the Metropolitan Open Spaces Act, 1881.

Provided that—

(*a.*) In the case of consecrated ground, the bishop, by any license or faculty granted under the Metropolitan Open Spaces Act or this Act, and

50 & 51 Vict. c. 32.

(*b.*) In the case of any churchyard, cemetery, or burial ground which is not consecrated, the body from which any such estate, interest, or control as aforesaid is acquired

may expressly sanction any such use of the ground, and may specify any conditions as to the extent or manner of such use.

Provision as to removal of tombstones and monuments.

3. In the case of any disused churchyard, cemetery, or burial ground, at least three months before any tombstone or monument is moved, the following steps shall be taken:

(*a.*) A statement shall be prepared sufficiently describing by the name and date appearing thereon the tombstones and monuments standing or being in the ground, and such other particulars as may be necessary;

(*b.*) Such statements shall be deposited with the clerk of the board or vestry, and shall be open to inspection by all persons;

(*c.*) An advertisement of the intention to remove or change the position of such tombstones and monuments shall be inserted three times at least in some newspaper circulating in the neighbourhood of the burial ground, and such advertisement shall give notice of the deposit of such statement as is hereinbefore described, and of the hours within which the same may be inspected;

(*d.*) A notice in terms similar to the advertisement shall be placed on the door of the church (if any) to which such churchyard, cemetery, or burial ground is attached, and shall be delivered or sent by post to any person known or believed by the board or vestry to be a near

relative of any person whose death is recorded on any such tombstone or monument. 50 & 51 Vict. c. 32.

In the case of any consecrated ground no application for a faculty shall be made until the expiration of one month at least after the appearance of the last of such advertisements as aforesaid.

Provided that on any application for a faculty, nothing shall prevent the bishop from directing or sanctioning the removal of any tombstone or monument if he is of opinion that reasonable steps have been taken to bring the intention to effect such removal to the notice of some person having a family interest in such removal.

The provisions of this section modify s. 5 of 44 & 45 Vict. c. 34, *ante*, p. 412. See notes to that section, and see *The Vicar and Churchwardens of St. Botolph Without Aldgate* v. *Parishioners of the Same*, [1892] P. 173.

For an application under this section and dicta on the rule that an ecclesiastical court will not inquire into questions of title, see *In re Camden Town Burial Ground*, [1889] 5 Times Law Reports 111.

4. In the Disused Burial Grounds Act, 1884, and this Act, the expression "burial ground" shall have the same meaning as in the Metropolitan Open Spaces Act, 1881, as amended by this Act, and the expression "disused burial ground" shall mean any burial ground which is no longer used for interments, whether or not such ground shall have been partially or wholly closed for burials under the provisions of any statute or order in council, and the expression "building" shall include any temporary or movable building. Amendment of 47 & 48 Vict. c. 72.

For the definition of "disused burial ground" in the Disused Burial Grounds Act, 1884, see s. 2 of that Act, *ante*, p. 418, and of "burial ground" in the Metropolitan Open Spaces Act, s. 1 of that Act, *ante*, p. 405.

The term "disused burial ground" under the combined

50 & 51 Vict. c. 32.

effect of this section and the sections herein referred to means any ground, whether consecrated or not, which has been at any time set apart for purposes of interment, whether interments have taken place in it or not, and which has been partially or wholly closed under the provisions of any statute or order in council, or has become otherwise disused (*In re Ponsford and Newport District School Board*, [1894] 1 Ch. 454).

The site of a church where intramural burials have taken place is not within the definition (*In re Ecclesiastical Commissioners and New City of London Brewery Company's Contract*, [1895] 1 Ch. 702).

A band-stand has been held to be within the definition of building in this section (*Att.-Gen.* v. *St. Pancras Vestry*, [1893] 69 L. T. N. S. 627).

Extension of certain provisions of Metropolitan Open Spaces Acts to urban and certain rural sanitary districts.

5. All the provisions of the principal Acts as amended by this Act (except sections four, five, six, seven, and eight of the Metropolitan Open Spaces Act, 1877, and so much of section six of the Metropolitan Open Spaces Act, 1881, as begins with the words "bye-laws made under this Act" and ends with the figures "1855," and also except sections ten, eleven, twelve, and thirteen of the last-mentioned Act,) shall extend and be applicable to and in respect of any and every urban sanitary district, and any and every rural sanitary district in respect of which the sanitary authority shall have been invested by an order of the Local Government Board with the powers of this Act, and to the open spaces and burial grounds in such districts respectively; and for the purpose of such extension and application to every such district, every urban authority and every such rural authority shall have and may exercise, and there shall be vested in such authority in and for its district, all and every or any such powers, authorities, and capacities in respect of, or in relation to, open spaces or burial grounds within such district as the Metropolitan Board of Works, herein called the Metropolitan Board, by

virtue of the principal Acts as amended by this Act have or may exercise or enjoy with regard to open spaces or burial grounds within the metropolis or any of them; and for the purposes of this Act and in respect of any and every open space or burial ground within any such sanitary district, and of any and every such authority, the principal Acts shall be read and take effect as if the word "metropolis" when used therein meant the same sanitary district, and as if the words "Metropolitan Board" and "Board" when used therein meant the sanitary authority of the same district, and as if the words "any two or more London daily papers," whenever they occur therein, meant "any two or more local newspapers circulating within the sanitary district." 50 & 51 Vict. c. 32.

By the Local Government Act, 1888 (51 & 52 Vict. c. 41, s. 40, sub-s. 8), the powers, duties, and liabilities of the Metropolitan Board of Works are transferred to their successors in title, the London County Council.

6. All powers and duties conferred upon the Metropolitan Board by the Metropolitan Open Spaces Act, 1877, may, after the passing of this Act, be exercised and performed by any vestry or district board of works for the parishes and districts specified in Schedules A. and B. of the Metropolis Management Act, 1855, as amended by subsequent Acts. Extension of 40 & 41 Vict. c. 35 to vestries and district boards.

7. Any corporation other than municipal corporations or body of persons having power, either with or without the consent of any other corporation or body of persons, to sell land belonging to such corporation or body may, but with the like consent (if any), convey, for valuable or nominal consideration or by way of gift, to any urban or rural authority such land, or any part thereof, for the purpose of the same being preserved as Power of corporation to make free gift of land for open space.

50 & 51 Vict. c. 32.

an open space for the enjoyment of the public, and may so convey the same with or without conditions, and the urban or rural authority may accept such open space, and, if conditions are imposed, subject to such conditions, and such open space shall be deemed to be an open space within the meaning of the principal Acts and this Act.

Where a corporation having power under this section to convey land are themselves the urban or rural authority, this section shall enable such authority to appropriate their land for an open space, and shall, with the necessary modifications, apply to such appropriation in like manner as it applies to the conveyance.

By s. 102 of the Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), the council of a municipal borough shall not, unless authorised by Act of Parliament, alienate any corporate land without the consent of the Treasury.

Expenses.

8.—(1.) All expenses incurred under this Act by an urban or a rural authority shall be deemed to have been incurred in the execution of the Public Health Act, 1875, and shall be defrayed accordingly, and the purposes of this Act shall be deemed to be the purposes of the Public Health Act, 1875.

See ss. 207 and 208 of the Public Health Act, 1875, set out *post*, p. 704.

(2.) Provided that the expenses incurred by a rural authority shall be deemed to be special expenses under that Act incurred in respect of the contributory place or places for which the powers of this Act are exercised, and all the provisions of the Public Health Act, 1875, which would be applicable in the case of an apportionment of special expenses for works for the common benefit of two or more contributory places, shall apply to any such expenses.

See ss. 207 and 208 of the Public Health Act, 1875, as to defraying expenses. 50 & 51 Vict. c. 32.

Saving for Crown lands.

9. This Act shall not extend to any land belonging to Her Majesty in right of her Crown or of her Duchy of Lancaster, or to any garden or ornamental ground for the time being under the management of the Commissioners for the time being of Her Majesty's Works and Public Buildings.

Bye-laws.

10. All the provisions with respect to bye-laws contained in sections one hundred and eighty-two to one hundred and eighty-six (both inclusive) of the Public Health Act, 1875, shall apply to all bye-laws from time to time made by an urban or rural authority under the powers of this Act, and the penalties imposed by any such bye-laws may be recovered in a summary manner.

Power over open spaces already vested in sanitary authority.

11. The Metropolitan Board or the sanitary authority may exercise all the powers given to them by the Metropolitan Open Spaces Act, 1881, or this Act respecting open spaces, churchyards, cemeteries, and burial grounds transferred to them in pursuance of the said Act or of this Act in respect of any open spaces, churchyards, cemeteries, and burial grounds of a similar nature which are or shall be vested in them in pursuance of any other statute, or of which they are otherwise the owners.

See note to s. 5.

Power of Metropolitan Board with respect to public walks or pleasure grounds.

12. The Metropolitan Board may purchase or take on lease, lay out, plant, improve, and maintain lands for the purpose of being used as public walks or pleasure grounds, and may support or contribute to the support of public walks or pleasure grounds provided by any person whomsoever.

See note to s. 5.

50 & 51 Vict. c. 32.

Extension of Acts to Ireland.

13. The principal Acts and this Act shall apply to Ireland, subject to the following provisions:

In the said Acts—

41 & 42 Vict. c. 52.

References to the Public Health Act, 1875, shall be construed as references to the Public Health (Ireland) Act, 1878, and the reference to sections one hundred and eighty-two to one hundred and eighty-six of the first-mentioned Act shall be construed as referring to sections two hundred and nineteen to two hundred and twenty-three of the latter Act.

Reference to any private or local Act of Parliament shall be construed so as to include any Act of the Parliament of Ireland.

References to a "vestry," "district board," "corporation," or "Metropolitan Board," shall be construed as references to the sanitary authority.

References to the London daily papers shall be construed as references to any newspapers, daily or weekly, circulating within the district of the sanitary authority.

References to Her Majesty's Council shall be construed as references to Her Majesty's Privy Council in Ireland.

References to the Local Government Board shall be construed as references to the Local Government Board for Ireland.

23 & 24 Vict. c. 106. 14 & 15 Vict. c. 70. 23 & 24 Vict. c. 97. 27 & 28 Vict. c. 71. 31 & 32 Vict. c. 70.

References to the Lands Clauses Act, 1845, shall be construed as references to that Act, as amended by the Lands Clauses Consolidation Acts Amendment Act, 1860, the Railways (Ireland) Act, 1851, the Railways (Ireland) Act, 1860, the Railways (Ireland) Act, 1864, and the Railways Traverse Act.

Nothing contained in the principal Acts or in this Act shall apply to any land for the time being under the management of the Commissioners of Public Works in Ireland, or belonging to the Benchers of the King's Inns in Dublin. 50 & 51 Vict. c. 32.

14. This Act may be cited as the Open Spaces Act, 1887, and may be read with the principal Acts as one Act. Short title and construction.

See note to s. 8 of 40 & 41 Vict. c. 35, *ante*, p. 403.

SCHEDULE.

Portions of the Metropolitan Open Spaces Act, 1881, *repealed.*

In section one, the following words occurring in the definition of an "open space," viz. "but shall not include any inclosed land which has not a public road or footpath completely round the same."

In the same section, the following words occurring in the definition of a "burial ground," viz. "and in which interments have taken place since the year 1800."

In the second paragraph of section five, the words, "but such Metropolitan Board, vestry, or district board shall not allow the playing of any games or sports therein."

53 & 54 VICT. C. 15.

53 & 54 Vict. c. 15.

An Act to amend the Open Spaces Acts.

[25th July, 1890.]

BE it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

53 & 54 Vict. c. 15.

Short title and construction. 40 & 41 Vict. c. 35. 44 & 45 Vict. c. 34. 50 & 51 Vict. c. 32.

1. This Act may be cited as the Open Spaces Act, 1890, and may be read with the Metropolitan Open Spaces Acts, 1877 and 1881, and the Open Spaces Act, 1887 (hereinafter called the principal Acts) as one Act, and this Act and the principal Acts may be cited as the Open Spaces Acts, 1877 to 1890.

The Short Titles Act, 1896, also provides for the same method of citing these Acts.

Definitions.

2. In this Act—

The expression "local authority" shall mean and include any of the public bodies who are empowered by the principal Acts to hold open spaces for the purposes of the Open Spaces Acts, 1877 to 1890:

"The court" shall mean the Chancery Division of the High Court of Justice in England and Ireland, and the county court of the district in which the whole or part of any open space may be situated as herein provided.

Transfer to local authority of spaces held by trustees for purposes of public recreation.

3. The trustees of land held upon trust for the purposes of public recreation may, in pursuance of a resolution duly passed as provided by section two of the Metropolitan Open Spaces Act, 1881, transfer by free gift, absolutely or for a limited term, to the local authority of the district in which the whole or the greater part in area of the land is situate, the land so held by them, if such authority is willing to accept such transfer, to be held by the transferees on the trusts and subject to the conditions on which the transferors held the same, or upon such other trusts and subject to such other conditions (so that the land be appropriated to the purposes of public recreation) as may be agreed upon between the transferors and transferees with the approval of the Charity Commissioners for England and Wales, or, as respects Ireland, of the Commissioners of Chari-

table Donations and Bequests for Ireland. Subject to the obligation of the land so transferred being used for the purposes of public recreation as aforesaid, the local authority may hold the same as and for the purposes of an open space under the Open Spaces Acts, 1877 to 1890. This section shall not apply to any trustees elected or appointed under any local or special Act of Parliament. 53 & 54 Vict. c. 15.

Similar power with respect to trustees of other open spaces.

4. When any open space shall be situate wholly or in part within the district of a local authority, and shall be vested in trustees, other than such trustees as are mentioned in the principal Acts, or in the last preceding section of this Act, for any charitable purpose, and as part of their trust estate, and it shall appear to the majority of such trustees that such open space is no longer required for the purposes of their trust, or that the same may with advantage to the trust be dealt with under the provisions of this section, it shall be lawful for such trustees, in pursuance of a resolution passed by them in the manner prescribed in the last preceding section of this Act, and where the open space is subject to the provisions of the Charitable Trusts Acts, 1883 to 1887, with such authority or approval as is required by those Acts for a sale of the open space, and in other cases in pursuance of an order of the court to be obtained as hereinafter provided, to convey or demise such open space to such local authority upon such terms as shall be mutually agreed between them, and the local authority shall thenceforth be entitled to hold the same as an open space upon the terms and under the conditions specified in any such conveyance or demise, or upon such terms and under such conditions as may be so authorised or approved, or as the court shall from time to time order, as the case may be.

53 & 54 Vict. c. 15.

Procedure for obtaining order of court.

5. An order of the court may be made upon application by the trustees, and the court, before making any order, may direct such inquiries to be made, such consents to be obtained, and notice to be given to such persons as to the court shall seem expedient, and may make such order thereon as in its discretion appears proper. Rules for carrying out the preceding provisions of this Act may from time to time be made by the same authority as the general rules or orders of the High Court of Justice in England and Ireland, and of the county courts in England, Ireland, and Wales respectively are made.

Open Spaces Acts to apply outside district of local authority.

6. The Open Spaces Acts, 1877 to 1890, shall be applicable to the whole of any open space which is wholly or partly situated without the district of a local authority in the same manner to all intents and purposes as if the whole of such open space had been situated within such district.

Buildings on open spaces.

7. Where a portion of an area of land not exceeding a twentieth part is covered with a building or buildings, such land may notwithstanding be deemed to be an open space within the meaning of the Open Spaces Acts, 1877 to 1890.

For the definition of an open space see 44 & 45 Vict. c. 34, s. 1, *ante*, p. 404.

REGISTRATION

52 GEO. III. C. 146.

52 Geo. III. c. 146.

An Act for the better regulating and preserving Parish and other Registers of Births, Baptisms, Marriages, and Burials, in England. [28th July, 1812.]

WHEREAS the amending the manner and form of keeping and of preserving registers of baptisms, marriages and burials of His Majesty's subjects in the several parishes and places in England, will greatly facilitate the proof of pedigrees of persons claiming to be entitled to real or personal estates, and be otherwise of great public benefit and advantage; be it therefore enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, that from and after the thirty-first day of December One thousand eight hundred and twelve, registers of public and private baptisms, marriages, and burials, solemnised according to the rites of the united Church of England and Ireland, within all parishes or chapelries in England, whether subject to the ordinary or peculiar, or other jurisdiction, shall be made and kept by the rector, vicar, curate, or officiating minister of every parish, or of any chapelry where the ceremonies of baptism, marriage, and burial

Officiating ministers to keep registers of baptisms, &c.

52 Geo. III. c. 146.

Parishes to provide leaved books.

have been usually and may, according to law, be performed, for the time being, in books of parchment, or of good and durable paper, to be provided by His Majesty's printer as occasion may require, at the expense of the respective parishes or chapelries; whereon shall be printed, upon each side of every leaf, the heads of information herein required to be entered in the registers of baptisms, marriages, and burials respectively, and every such entry shall be numbered progressively from the beginning to the end of each book, the first entry to be distinguished by number one; and every such entry shall be divided from the entry next following by a printed line, according to the forms contained in the Schedules (A.) (B.) (C.) hereto annexed; and every page of every such book shall be numbered with progressive numbers, the first page being marked with the number 1. in the middle of the upper part of such page, and every subsequent page being marked in like manner with progressive numbers, from number 1. to the end of the book.

By 6 & 7 Will. IV. c. 86, s. 1, this Act is entirely repealed as to marriages, but is left in force as to baptisms and burials.

By the Short Titles Act, 1896, this Act may be cited as the Parochial Registers Act, 1812.

King's printer to transmit the Act and forms of the register to the ministers.

II. And, for better ensuring the regularity and uniformity of such register books, be it further enacted, that a printed copy of this Act, together with one book so prepared as aforesaid, and adapted to the form of the register of baptisms prescribed in the Schedule (A.) to this Act annexed; and also one other book so prepared as aforesaid, and adapted to the form prescribed for the register of marriages in the Schedule (B.) to this Act annexed; and also one other book so prepared as aforesaid, and adapted to the form prescribed for the register

of burials in the Schedule (C.) to this Act annexed, shall, as soon as conveniently may be after the passing of this Act, be provided and transmitted by His Majesty's printer to the officiating ministers of the several parishes and chapelries in England respectively, who are hereby required to use and apply the same in and to the purposes of this Act; and such books respectively shall be proportioned to the population of the several parishes and chapelries, according to the last returns of such population made under the authority of Parliament; and other books of like form and quality shall for the like purposes be furnished from time to time by the churchwardens or chapelwardens of every parish or chapelry, at the expense of the said parish or chapelry, whenever they shall be required by the rector, vicar, curate, or officiating minister to provide the same; and all such books shall be of paper, unless required to be of parchment by such churchwardens or chapelwardens respectively. 52 Geo. III. c. 146.

III. And be it further enacted, that such registers shall be kept in such separate books aforesaid, and that every such rector, vicar, curate, or officiating minister shall as soon as possible after the solemnisation of every baptism, whether private or public, or burial respectively, record and enter in a fair and legible handwriting, in the proper register book to be provided, made, and kept as aforesaid, the several particulars described in the several Schedules hereinbefore mentioned, and sign the same; and in no case, unless prevented by sickness, or other unavoidable impediment, later than within seven days after the ceremony of any such baptism or burial shall have taken place. Registers to be in separate books.

IV. And be it further enacted, that whenever the ceremony of baptism or burial shall be performed in any Certificate of baptism or burial

52 Geo. III. c. 146.

when performed in any other place than the parish church, &c., to be according to Schedule (D.)

other place than the parish church or churchyard of any parish, or the chapel or chapel yard of any chapelry, providing its own distinct registers, and such ceremony shall be performed by any minister not being the rector, vicar, minister, or curate of such parish or chapelry, the minister who shall perform such ceremony of baptism or burial shall, on the same or on the next day, transmit to the rector, vicar, or other minister of such parish or chapelry, or his curate, a certificate of such baptism or burial in the form contained in the Schedule (D.) to this Act annexed, and the rector, vicar, minister, or curate of such parish or chapelry, shall thereupon enter such baptism or burial according to such certificate in the book kept pursuant to this Act for such purpose; and shall add to such entry the following words, "According to the certificate of the Reverend transmitted to me on the day of ."

This section is not to apply to any burials in grounds provided under the Burial Acts (20 & 21 Vict. c. 81, s. 16, *ante*, p. 216).

Up till 1840, registers kept by Nonconformists or other custodians not legally recognised, could not have been given in evidence (*Ex parte Taylor*, [1820] 1 J. & W. 483). By 3 & 4 Vict. c. 92, provision was made for certifying such registers, for their deposit with the Registrar-General, and for their reception in evidence. Further provision to the same effect was made by 21 & 22 Vict. c. 25. See Phill. Ecc. Law 505. Now by 27 & 28 Vict. c. 97, *post*, p. 452, burials in all burial grounds must be registered, and the registers are legal evidence.

Books to remain in custody of rector, &c.

V. And be it further enacted, that the several books wherein such entries shall respectively be made, and all register books heretofore in use, shall be deemed to belong to every such parish or chapelry respectively, and shall be kept by, and remain in the power and

custody of the rector, vicar, curate, or other officiating minister of each respective parish or chapelry as aforesaid, and shall be by him safely and securely kept in a dry well-painted iron chest, to be provided and repaired as occasion may require, at the expense of the parish or chapelry, and which said chest containing the said books shall be constantly kept locked in some dry, safe, and secure place within the usual place of residence of such rector, vicar, curate, or other officiating minister, if resident within the parish or chapelry, or in the parish church or chapel; and the said books shall not, nor shall any of them be taken or removed from or out of the said chest, at any time or for any cause whatever, except for the purpose of making such entries therein as aforesaid, or for the inspection of persons desirous to make search therein, or to obtain copies from or out of the same, or to be produced as evidence in some court of law or equity, or to be inspected as to the state and condition thereof, or for some of the purposes of this Act; and that immediately after making such respective entries, or producing the said books respectively for the purposes aforesaid, the said books shall forthwith again be safely and securely deposited in the said chest. 52 Geo. III. c. 146.

In *Dormer* v. *Ekyns*, [1733] 2 Barn. K. B. 269, it was held that there was a right in proper cases to inspect parish books, but a rector or curate cannot be compelled to make copies or furnish a certificate.

VI. And be it further enacted, that at the expiration of two months after the thirty-first day of December One thousand eight hundred and thirteen, and at the expiration of two months after the end of every subsequent year, fair copies of all the entries of the several baptisms, marriages, and burials, which shall have been solemnised or shall have taken place within the year preceding, Copies of registers to be verified.

52 Geo. III. c. 146.

shall be made by the rector, vicar, curate, or other resident or officiating minister, (or by the churchwardens, chapelwardens, clerk, or other person duly appointed for the purpose under and by the direction of such rector, vicar, curate, or other resident or officiating minister,) on parchment, in the same form as prescribed in the schedules hereunto annexed (to be provided by the respective parishes); and the contents of such copies shall be verified and signed in the form following, by the rector, vicar, curate, or officiating minister of the parish or chapelry to which such respective register book shall appertain:

'I *A. B.* rector [*or, as the case may be*] of the parish of 'C. [*or,* of the chapelry of *D.*] in the county of *E.* do 'hereby solemnly declare, that the several writings hereto 'annexed, purporting to be copies of the several entries 'contained in the several register books of baptisms, 'marriages, and burials, of the parish or chapelry afore- 'said, from the day of to the 'day of are true copies of all the several entries 'in the said several register books respectively from the 'said day of to the said day 'of ; and that no other entry during such period 'is contained in any of such books respectively, are 'truly made according to the best of my knowledge and 'belief (*sic*). 'Signed *A. B.*'

Which declaration shall be fairly written, without any stamp, on the said copy immediately after the last entry therein; and the signature to such declaration shall be attested by the churchwardens or chapelwardens, or one of them, of the parish or chapelry to which such register books shall belong.

Copies of register books to be

VII. And be it further enacted, that copies of the said register books, verified and attested as aforesaid,

shall, whether such parish or chapelry shall be subject to the ordinary, peculiar, or other jurisdiction, be transmitted by such churchwardens or chapelwardens, after they, or one of them, shall have signed the same, by the post, to the registrars of each diocese in England within which the church or chapel shall be situated, on or before the first day of June One thousand eight hundred and fourteen, and on or before the first day of June in every subsequent year.

transmitted to the registrars of each diocese.

VIII. And be it further enacted, that the registrar of every diocese in England shall, on or before the first day of July One thousand eight hundred and fourteen, and on or before the first day of July in every subsequent year, make a report to the bishop of such diocese, whether the copies of the registers of the baptisms, marriages, and burials, in the several parishes and places within such diocese have been sent to such registrar, in the manner and within the time herein required; and in the event of any failure of the transmission of the copies of the registers as herein required, by the churchwardens and chapelwardens of any parish or chapelry in England, the registrar shall state the default of the parish or chapelry specially in his report to the bishop.

Registrar to make reports to bishops, whether the returns have been sent to them.

IX. And be it further enacted, that in case the rector, vicar, or other officiating minister or curate of any parish or chapelry shall neglect or refuse to verify and sign such copies of such several register books, and such declaration as aforesaid, so that the churchwardens or chapelwardens shall not be able to transmit the same, as required by this Act, such churchwardens or chapelwardens shall, within the time required by this Act for the transmission thereof, certify such default to the registrar of the diocese within which such parish or

In case of neglect to verify copies of the register books, churchwardens to certify the default.

52 Geo. III. c. 146.

chapelry shall be, who shall specially state the same in his report to the bishop of such diocese.

In extra-parochial places, memorandum may be delivered, of every baptism or burial, to the minister of some adjoining parish.

X. And, for the obtaining of returns and registers of baptisms and burials in extra-parochial places in England, where there is no church or chapel, be it further enacted, that in all cases of the baptism of any child, or the burial of any person in any extra-parochial place in England, according to the rites of the Established Church, where there is no church or chapel, it shall be lawful for the officiating minister, within one month after such baptism or burial, to deliver to the rector, vicar, or curate of such parish immediately adjoining to the place in which such baptism or burial shall take place, as the ordinary shall direct, a memorandum of such baptism or burial, signed by such parent of the child baptized, or a memorandum of such burial, signed by the person employed about the same, together with two of the persons attending the same, according as the nature of the case may respectively require; and every such memorandum respectively shall contain all such particulars as are hereinbefore required; and every such memorandum delivered to the rector, vicar, or curate of any such adjoining parish or chapelry, shall be entered in the register of his parish, and form a part thereof.

Certain letters and packets to go free of postage.

XI. And be it further enacted, that the superscription upon all letters and packets containing the copies of such parish or other registers, to be transmitted by the post to the several offices of the said registrars as aforesaid, shall be indorsed and signed by the church-wardens or chapelwardens of every respective parish and chapelry in England, in the form contained in Schedule (E.); and that all such letters and packets shall be carried and conveyed by means of His Majesty's Post Office to, and be delivered at the offices of the said

registrars, *without postage or other charge being paid or payable for the same.* 52 Geo. III. c. 146.

The words in italics were repealed by the Statute Law Revision Act, 1873.

Register of books and memorandums, when transmitted to registrars, to be safely kept from damage.

XII. And be it further enacted, that when and so often as the copies of the said register books of baptisms, marriages, and burials as aforesaid, and also the said lists of births, baptisms, marriages, or burials as aforesaid, shall be transmitted to the office of the said registrars respectively as aforesaid, pursuant to the directions hereinbefore contained for that purpose, the said registrars shall respectively cause all the said books and lists to be safely and securely deposited, kept, and preserved from damage or destruction by fire or otherwise, and to be carefully arranged for the purpose of being resorted to as occasion may require; and the said registrars respectively shall also cause correct alphabetical lists to be made and kept in books suitable to the purpose, of the names of all persons and places mentioned in such books and lists as shall have been transmitted to the said registrars respectively, which alphabetical lists and books, and also the copies of registers and lists so transmitted to the said registrars as aforesaid, shall be open to public search at all reasonable times on payment of the usual fees.

For providing proper places to preserve copies of registers in dioceses where it shall be found necessary.

XIII. *And whereas in many dioceses the places wherein the copies of the parochial registers of baptisms, marriages, and burials, as well as the original wills proved within the same respectively are kept, are insufficient for their being preserved with due care; for which a remedy should be applied in those dioceses where it shall be found necessary; be it further enacted, that in order to a due examination thereof, the bishop, together with the custodes rotulorum of the several counties within each diocese, and*

52 Geo. III. c. 146.

the chancellor thereof, shall before the first day of February One thousand eight hundred and thirteen, cause a careful survey to be made of the several places in which the parochial registers, and the wills proved within the diocese, are kept; and shall make a report to His Majesty's most honourable privy council, of the state of the same, on or before the first day of March following, setting forth in each case whether the buildings are in all respects fit and proper for the preservation of papers of the above description, as well with respect to space as to security from fire, and to protection from damp, and if not, at what probable expense they can be made so; and where the instruments and papers before mentioned are kept in dwelling-houses or other places, which cannot be made fit and secure for the due preservation thereof, then and in such case the persons before named shall enquire and report in like manner at what expense proper buildings may be provided, and in what places, so as to have one place within each diocese for the due preservation of all such registers and wills; together with their opinion upon the most suitable mode of remunerating the officers employed in each registry, for their additional trouble and expense in carrying the provisions of this Act into execution.

Repealed by the Statute Law Revision Act, 1873.

Penalty on making false entries, or false copies of such entries.

XIV. *And be it further enacted, that if any person shall knowingly and wilfully insert or cause or permit to be inserted in any such register book of such baptisms, burials, or marriages as aforesaid, or in any such copy of any such register so directed to be transmitted to the registrars as aforesaid, or in any such lists or declarations also directed to be transmitted to such registrars as aforesaid, any false entry of any matter or thing relating to any baptism, burial, or marriage, or shall falsely make, alter, forge, or counterfeit, or cause or procure, or wilfully*

permit to be falsely made, altered, forged, or counterfeited, any part of any such register, list, or declaration, or of any such copy of any such register; or shall wilfully destroy, deface, or injure, or cause or procure, or permit to be destroyed, defaced, or injured, any such register book, or any part thereof; or shall knowingly and wilfully sign, or certify any copy of any such register hereby required to be transmitted as aforesaid, which shall be false in any part thereof, knowing the same to be false; every person so offending, and being thereof lawfully convicted, shall be deemed and adjudged to be guilty of felony, and shall be transported for the term of fourteen years.

52 Geo. III. c. 146.

Repealed by 11 Geo. IV. & 1 Will. IV. c. 66, s. 31.

The present law is contained in 24 & 25 Vict. c. 98, s. 36, *post*, p. 450.

XV. *Provided always, and be it enacted, that no rector, vicar, curate, or officiating minister of any parish, or chapel, who shall discover any error to have been committed in the form or substance of the entry in the register book of any such baptism, burial, or marriage, respectively by him solemnised, shall be liable to all or any of the penalties herein mentioned, if he shall within one calendar month after the discovery of such error, in the presence of the parent or parents of the child whose baptism may have been entered in such register, or of the parties married, or in the presence of two persons who shall have attended at any burial, or in case of the death or absence of the respective parties aforesaid, then in the presence of the churchwardens or chapelwardens (who shall respectively attest the same), alter and correct the entry which shall have been found erroneous, according to the truth of the case, by entry in the margin of the book wherein such erroneous entry shall have been made, without any alteration or obliteration of the original entry, and shall sign*

But not to affect accidental errors, if duly and timely corrected according to the truth and justice of the case.

52 Geo. III. c. 146. *such entry in the margin, and add to such signature the day of the month and year when such correction shall be made: provided also, that in the fair copy of the registers respectively which shall be transmitted to the registrars of the dioceses, the said rector, vicar, curate, or officiating minister shall certify the alterations so made by him as aforesaid.*

Repealed by 11 Geo. IV. & 1 Will. IV. c. 66, s. 31.

Fees heretofore payable, not to be diminished by this Act.

XVI. Provided always, that nothing in this Act contained shall in any manner diminish or increase the fees heretofore payable or of right due to any minister for the performance of any of the before-mentioned duties, or to any minister or registrar, for giving copies of such registrations, but that all due legal and accustomed fees on such occasions, and all powers and remedies for recovery thereof, shall be and remain as though this Act had not been made.

See note to s. 5.

Copy of register not subject to stamp duty.

XVII. Provided also, and be it enacted, that no duplicate or copy of any register of baptism, marriage, or burial, made under the directions and for the purposes of this Act, shall be chargeable with any stamp duty thereon; any Act now in force to the contrary thereof in anywise notwithstanding.

This refers to copies made for transmission to the registrar under s. 6. By the Stamp Act, 1891 (54 & 55 Vict. c. 39), *post*, p. 457, a stamp duty of 1*d*. is imposed on all copies or extracts from registers for burials except those furnished by any clergyman, registrar, or other official person, pursuant to and for the purposes of any Act of Parliament, or furnished to any general or superintending registrar under any general regulation, and except any copy or extract for which the person giving the same is not entitled to any reward.

Application of penalties.

XVIII. And be it further enacted, that one half of the amount of all fines or penalties to be levied in

pursuance of this Act, shall go to the person who shall inform or sue for the same; and the remainder of such fines as shall be imposed on any churchwarden or chapelwarden shall go to the poor of the parish or place for which such churchwarden or chapelwarden shall serve; and the remainder of such fines as shall be imposed on any rector, vicar, minister, or curate, or registrar, shall be paid and applied to such charitable purposes, in the county within which the parish or place shall be, as shall be appointed and directed by the bishop of the diocese. 52 Geo. III. c. 146.

List of all registers to be transmitted.

XIX. *And be it further enacted, that the rector, vicar, curate, or officiating minister of every parish and chapelry in England, whether subject to the ordinary, peculiar, or other jurisdiction, shall transmit to the registrar of the diocese in which the parish or chapelry shall be situated, before the first day of June One thousand eight hundred and thirteen, a list of all registers which now are in such parish or chapelry respectively, stating the periods at which they respectively commence and terminate, the periods (if any) for which they are deficient, and the places where they are deposited.*

Repealed by the Statute Law Revision Act, 1873.

Provisions of this Act to extend to cathedral churches, &c.

XX. And be it further enacted, that all and every the provisions in this Act shall extend, so far as circumstances will permit, to cathedral and collegiate churches, and chapels of colleges or hospitals, and the burying grounds belonging thereto; and to the ministers who shall officiate in such cathedral or collegiate churches, and chapels of colleges or hospitals and burying grounds respectively, and shall baptize, marry, or bury any person or persons, although such cathedral or collegiate churches, or chapels of colleges or hospitals, or the burying grounds belonging thereto, may not be parochial, or

52 Geo. III. c. 146. the ministers officiating therein may not be, as such, parochial ministers, and there shall be no churchwarden or churchwardens thereof; and in all such cases, the books hereinbefore directed to be provided, shall be provided at the expense of the body having right to appoint the officiating minister in every such cathedral or collegiate church or chapel of a college or hospital; and copies thereof shall be transmitted to the registrar of the diocese within which such cathedral or collegiate church or chapel of a college or hospital shall be, by the officiating minister of such church, in like manner as is herein directed with respect to parochial ministers, and shall be attested by two of the officers of such church, college, or hospital, as the copies of parochial registers are herein directed to be attested by churchwardens:

Not to repeal any provision of 26 Geo. II. c. 33. *provided always, that nothing in this Act contained shall extend to repeal any provision contained in an Act passed in the twenty-sixth year of the reign of his late Majesty King George the Second, intituled "An Act for better preventing clandestine marriages."*

The words in italics are repealed by the Statute Law Revision Act, 1873.

SCHEDULES TO WHICH THIS ACT REFERS.

Schedule (A.)

This is a form of Baptism Register.

Schedule (B.)

This is a form of Marriage Register.

Schedule (C.)

1.

Burials in the Parish of *A.* in the County of *B.* in the year One thousand eight hundred and thirteen.

Name.	Abode.	When Buried.	Age.	By whom the Ceremony was performed.
John Wilson No. 1.	Duke Street, Westminster.	1813. 1st May.	62.	

Schedule (D.)

I do hereby certify, that I did on the day of baptize according to the rites of the united Church of England and Ireland, son (or daughter) of and his wife, by the name of .

To the Rector [*or, as the case may be*] of .

I do hereby certify, that on the day of *A.B.* of aged was buried in [*stating the place of burial*], and that the ceremony of burial was performed according to the rites of the united Church of England and Ireland, by me, .

To the Rector [*or, as the case may be*] of .

Schedule (E.)

To the Registrar of the Diocese of
at

A.B. *C.D.* } Churchwardens or chapelwardens of the parish or chapelry of [*or such other description as the case shall require*].

11 Geo. IV. & 1 Will. IV. c. 66.

11 GEO. IV. & 1 WILL. IV. c. 66.

An Act for reducing into one Act all such Forgeries as shall henceforth be punished with Death, and for otherwise amending the Laws relative to Forgery.

[23rd July, 1830.]

* * * * * *

Inserting any false entry in any register of baptisms, marriages, or burials; forging or altering any such entry; uttering any false or forged entry; destroying, &c. the register; forging any license of marriage, felony; punishment, transportation or imprisonment.

XX. And be it enacted, that if any person shall wilfully insert or knowingly or wilfully cause to be inserted in any register of baptisms, marriages, or burials, which hath been or shall be made or kept by the rector, vicar, curate, or officiating minister of any parish, district parish, or any chapelry in England, any false entry of any matter relating to any baptism, marriage, or burial, or shall forge or alter in any such registry any entry of any matter relating to any baptism, marriage, or burial; or shall utter any writing as and for a copy of an entry in any such register of any matter relating to any baptism, marriage, or burial, knowing such writing to be false, forged, or altered; or if any person shall utter any copy of such entry knowing such entry shall be false, forged, or altered, or shall wilfully destroy, deface, or injure, or cause or permit to be destroyed or injured, any such register or any part thereof; or shall forge or alter, or shall utter, knowing the same to be forged or altered, any license of marriage, every such offender shall be guilty of felony and being convicted thereof shall be liable, at the discretion of the court, to be transported beyond the seas for life or for any term not less than seven years, or to be imprisoned for any term not exceeding four years nor less than two years.

Repealed by 24 & 25 Vict. c. 95, s. 1.

By the Short Titles Act, 1896, this Act may be cited as the Forgery Act, 1830.

11 Geo. IV. & 1 Will. IV. c. 66.

Rector, &c., not liable to any penalty for correcting, in the mode prescribed, accidental errors in the register.

XXI. Provided always and be it enacted, that no rector, vicar, curate, or officiating minister of any parish or chapelry who shall discover any error in the form or substance of the entry in the register of any baptism, marriage, or burial respectively by him solemnised, shall be liable to any of the penalties herein mentioned if he shall within one calendar month after the discovery of such error, in the presence of the parent or parents of the child baptized, or of the parties married, or in the presence of two persons who shall have attended at any burial, or in case of the death or absence of the respective parties aforesaid, then in the presence of the churchwardens or chapelwardens, correct the entry which shall have been found erroneous according to the truth of the case by entry in the margin of the register wherein such erroneous entry shall have been made, without any alteration or obliteration of the original entry, or shall sign such entry in the margin and add to such signature the day of the month and year when such correction shall be made; and such correction and signature shall be attested by the parties in whose presence the same are directed to be made as aforesaid. Provided also that in the copy of the register which shall be transmitted to the registrar of the diocese, the said rector, vicar, curate, or officiating minister shall certify the corrections so made by him as aforesaid.

* * * * * *

24 & 25 Vict. c. 98.

24 & 25 VICT. C. 98.

An Act to consolidate and amend the Statute Law of England and Ireland relating to indictable offences by Forgery. [6th August, 1861.]

* * * * * *

As to the forging registers of births, marriages, and deaths:—

Destroying, injuring, forging, or falsifying registers of births, baptisms, deaths, or burials, or certified copies.

XXXVI. Whosoever shall unlawfully destroy, deface, or injure, or cause or permit to be destroyed, defaced, or injured, any register of births, baptisms, marriages, deaths, or burials, which now is or hereinafter shall be by law authorised to be kept in England or Ireland, or any part of any such register, or any certified copy of such register or any part thereof, or shall forge or fraudulently alter in any such register any entry relating to any birth, baptism, marriage, death, or burial, or any part of such register, or any certified copy of such register or any part thereof, or shall knowingly and unlawfully insert or cause or permit to be inserted in any such register, or in any certified copy thereof, any false entry of any matter relating to any birth, baptism, marriage, death, or burial, or shall knowingly give any false certificate relating to any birth, baptism, marriage, death, or burial, or shall certify any writing to be a copy or extract from any such register, knowing such writing or the part of such register whereof such copy or extract shall be so given to be false in any material particular, or shall forge or counterfeit the seal of or belonging to any such register office or burial board, or shall offer, utter, or dispose of, or put off any such register, entry, certified copy, certificate, or seal, knowing the same to be false,

forged, or altered, or shall offer, utter, dispose of, or put off any entry in any register, knowing that entry to be false, forged, or altered, shall be guilty of felony, and being convicted thereof shall be liable, *at the discretion of the court,* to be kept in penal servitude for life or for any term not less than three years—*or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement.* 24 & 25 Vict. c. 98.

The words in italics are repealed by the Statute Law Revision Act (No. 2), 1893.

By the Short Titles Act, 1896, this Act may be cited as the Forgery Act, 1861.

Making false entries in copies of registers of baptisms, marriages, or burials, directed to be sent to any registrar, or destroying or concealing copies of registers.

XXXVII. Whosoever shall knowingly and wilfully insert, or cause or permit to be inserted, in any copy of any register directed or required by law to be transmitted to any registrar or other officer, any false entry of any matter relating to any baptism, marriage, or burial, or shall forge or alter, or shall offer, utter, dispose of, or put off, knowing the same to be forged or altered, any copy of any register so directed or required to be transmitted as aforesaid, which copy shall be false in any part thereof, knowing the same to be false, or shall unlawfully destroy, deface, or injure, or shall for any fraudulent purpose take from its place of deposit, or conceal, any such copy of any register, shall be guilty of felony, and being convicted thereof shall be liable *at the discretion of the court* to be kept in penal servitude for life, or for any term not less than three years—*or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement.*

The words in italics are repealed by the Statute Law Revision Act, 1893.

27 & 28 Vict. c. 97.

27 & 28 VICT. C. 97.

An Act to make further Provision for the Registration of Burials in England. [29th July, 1864.]

WHEREAS provision is made by law in England for the registration of burials performed according to the rites of the Established Church and of all burials in grounds provided under the Burial Acts:

And whereas it is expedient that all burials in England be registered:

Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

All burials to be registered.

1. All burials in any burial ground in England which are not now by law required to be registered shall be registered in register books to be provided for each such burial ground by the company, body, or persons to whom the same belongs, and to be kept for that purpose according to the laws in force by which registers are required to be kept by rectors, vicars, or curates of parishes or ecclesiastical districts in England.

For "the laws in force," see 52 Geo. III. c. 196, *ante*, p. 433, and for registers previously kept by Nonconformists, see notes to s. 4 of that Act, *ante*, p. 436.

By whom books to be kept.

2. Such register books shall be so kept for every such burial ground by some officer or person to be appointed to that duty by the company, body, or persons to whom such burial ground belongs.

Copies of registers to

3. Copies of the register books kept under this Act for every such burial ground shall be from time to time

made, verified, and signed by such officer or person as aforesaid, and sent by him to the registrar of the diocese wherein the burial ground to which the same relates is situate, to be kept with the copies of the register books of the parishes within such diocese.

27 & 28 Vict. c. 97.

Returns to be sent to registrar of diocese.

4. If any such company, body, or persons, or any such officer or person as aforesaid wilfully fail to comply with any of the provisions of this Act, they or he shall be guilty of an offence against this Act, and on summary conviction thereof before a justice of the peace shall be liable for every such offence to a penalty not exceeding five pounds.

Penalty for failure to comply with Act.

5. The register books kept under this Act, or copies thereof or extracts therefrom, shall be received in all courts as evidence of the burials entered therein.

Registers to be evidence.

6. The register books kept under this Act shall, as to searches therein and copies thereof and extracts therefrom, be subject to the regulations of the Act of the session of the sixth and seventh years of King William the Fourth (chapter eighty-six), "for registering births, deaths, and marriages in England," so far as those regulations relate to register books of burials kept by rectors, vicars, or curates.

Registers to be subject to regulations of 6 & 7 Will. IV. c. 86, as to searches, &c.

The Act referred to may now, by the Short Titles Act, 1896, be cited as the Births and Deaths Registration Act, 1836.

The regulations referred to are contained in s. 35 of that Act, which provides that every rector, vicar, or curate, who shall have the keeping for the time being of any register book of births, deaths, and marriages, shall at all reasonable times allow searches to be made of any register book in his keeping, and shall give a copy certified under his hand of any entry or entries in the same on payment of the fee thereinafter mentioned (that is to say), for every search extending over a period not more than one year, the sum of *1s.*, and *6d.* additional for every additional year, and the sum of *2s. 6d.* for every single certificate.

27 & 28 Vict. c. 97.

7. In this Act the term "burial ground" includes a vault or other place where any body is buried.

As to "burial ground."

8. This Act may be cited as the Registration of Burials Act, 1864.

Short title.

37 & 38 Vict. c. 88.

37 & 38 VICT. C. 88.

An Act to amend the Law relating to the Registration of Births and Deaths in England, and to consolidate the Law respecting the Registration of Births and Deaths at Sea. [7th August, 1874.]

* * * * * *

Coroner's order and registrar's certificate for burial.

17. A coroner *upon holding an inquest upon any body may, if he thinks fit, by order under his hand, authorise the body to be buried before registry of death, and* shall give such order to the relative of the deceased or other person who causes the body to be buried, or to the undertaker or other person having charge of the funeral, *and, except upon holding an inquest, no order, warrant, or other document for the burial of the body shall be given by the coroner.*

The registrar upon registering any death, or receiving a written requisition to attend at a house to register a death, or upon receiving such written notice of the occurrence of a death, accompanied by a medical certificate as is before provided by this Act, shall forthwith, or as soon after as he is required, give, without fee or reward, either to the person giving information concerning the death or sending the requisition or notice, or to the undertaker or other person having charge of the funeral of the deceased, a certificate under his hand that he has

registered or received notice of the death, as the case may be. 37 & 38 Vict. c. 88.

Every such order of the coroner and certificate of the registrar shall be delivered to the person who buries or performs any funeral or religious service for the burial of the body of the deceased; and any person to whom such order or certificate was given by the coroner or registrar who fails so to deliver or cause to be delivered the same, shall be liable to a penalty not exceeding forty shillings.

The person who performs any burial or religious service for the burial of any dead body as to which no order or certificate under this section is delivered to him, shall, within seven days after the burial, give notice thereof in writing to the registrar, and if he fail so to do shall be liable to a penalty not exceeding ten pounds.

Where burials take place under the Burial Laws Amendment Act, 1880, the order of the coroner or certificate of the registrar is to be delivered to the relative, &c. having charge of the funeral instead of to the person performing the burial service (43 & 44 Vict. c. 41, s. 11, *ante*, p. 246).

The Burial and Registration Acts (Doubts Removal) Act, 1881 (44 Vict. c. 2), *ante*, p. 250, was passed to remove mistakes which might have arisen under the last-mentioned section in consequence of a clerical error apparently affecting the present Act.

The words in italics are repealed by s. 45 and Sched. III. of the Coroner's Act, 1887 (50 & 51 Vict. c. 71), and s. 18, sub-s. 6, of that Act takes their place, enacting that "a coroner upon holding an inquest upon any body may, if he thinks fit after view of the body, by order under his hand, authorise the body to be buried before verdict and before registry of death, and shall deliver such order to the relative or other person to whom the same is required by the Registration Acts to be delivered; but except upon holding an inquest, no order, warrant, or other document for the burial of a body shall be

37 & 38 Vict. c. 88.

given by the coroner." It will be noticed that the first paragraph of the present section as amended possesses no sensible meaning, "such order" being entirely undefined.

For the registration of burials in cemeteries, see 10 & 11 Vict. c. 65, ss. 32 and 33, *ante*, pp. 277 and 278.

Burial of deceased children as still-born.

18. A person shall not bury or procure to be buried the body of any deceased child as if it were still-born.

A person who has control over or ordinarily buries bodies in any burial ground shall not permit to be buried in such burial ground the body of any deceased child as if it were still-born, and shall not permit to be buried or bury in such burial ground any still-born child before there is delivered to him either

(*a.*) A written certificate that such child was not born alive, signed by a registered medical practitioner who was in attendance at the birth, or has examined the body of such child; or

(*b.*) A declaration signed by some person who would, if the child had been born alive, have been required by this Act to give information concerning the birth, to the effect that no registered medical practitioner was present at the birth, or that his certificate cannot be obtained, and that the child was not born alive; or

(*c.*) If there has been an inquest, an order of the coroner.

Any person who acts in contravention of this section shall be liable to a penalty not exceeding ten pounds.

The provisions as to giving certificates of the cause of death are contained in s. 20 of the present Act.

Notice where coffin contains more than one body.

19. Where there is in the coffin in which any deceased person is brought for burial the body of any other deceased person or the body of any still-born child, the undertaker or other person who has charge of

the funeral shall deliver to the person who delivers or performs any funeral or religious service for the burial of such body or bodies notice in writing signed by such undertaker or other person, and stating to the best of his knowledge and belief with respect to each such body the following particulars: 37 & 38 Vict. c. 88.

(*a.*) If the body is a body of a deceased person, the name, sex, and place of abode of the said deceased person.

(*b.*) If the body is found exposed and the name and the place of abode unknown, the fact of the body being so found and of the said particulars being unknown; and

(*c.*) If the body is that of a deceased child without a name, or a still-born child, the name and place of abode of the father, or, if it is illegitimate, of the mother of such child.

Every person who fails to comply with this section shall be liable to a penalty not exceeding ten pounds.

* * * * * *

63. This Act may be cited as the Births and Deaths Registration Act, 1874.

54 & 55 VICT. C. 39.

54 & 55 Vict. c. 39.

An Act to consolidate the Enactments granting and relating to the Stamp Duties upon Instruments and certain other Enactments relating to Stamp Duties.

[21st July, 1891.]

I. From and after the commencement of this Act the stamp duties to be charged for the use of Her Majesty upon the instruments specified in the First Schedule to this Act shall be the several duties in the Charge of duties in Schedule.

54 & 55 Vict. c. 39.

said schedule specified, which duties shall be in substitution for the duties theretofore chargeable under the enactments repealed by this Act, and shall be subject to the exemptions contained in this Act and in any other Act for the time being in force.

* * * * * *

Certified Copies and Extracts from Registers of Births, &c.

Duty may be denoted by adhesive stamp.

LXIV. The duty upon a certified copy or extract of or from any register of births, baptisms, marriages, deaths, or burials is to be paid by the person requiring the copy or extract, and may be noted by an adhesive stamp, which is to be cancelled by the person by whom the copy or extract is signed before he delivers the same out of his hands, custody, or power.

SCHEDULE I.

	£	s.	d.
Copy or extract (*certified*) of or from any register of births, baptisms, marriages, deaths, or burials ...	0	0	1

Exemptions.

(1.) Copy or extract furnished by any clergyman, registrar, or other official person pursuant to or for the purposes of any Act, or furnished to any general or superintending registrar under any general regulation.

(2.) Copy or extract for which the person giving the same is not entitled to any fee or reward.

See 52 Geo. III. c. 146, s. 17, *ante*, p. 444.

THE BURIAL OF THE POOR.

59 GEO. III. C. 12.

An Act to amend the Laws for the Relief of the Poor.

[31st March, 1819.]

* * * * * *

Power to build or enlarge workhouses.

VIII. And be it further enacted, that in any parish not having a workhouse for the poor thereof, or where the workhouse shall be found insufficient or inconvenient, it shall be lawful for the churchwardens and overseers of the poor, by the direction of the inhabitants in vestry assembled, to erect and build in such parish a suitable workhouse, or to alter and enlarge any messuage or tenement belonging to such parish for that purpose, and to purchase or take on lease any ground within the parish for the purpose of such building, or for enlarging any such other messuage or tenement belonging to such parish for that purpose, or such churchwardens and overseers may and they are hereby authorised to add to and enlarge any such insufficient workhouse, as the inhabitants of the parish in vestry shall think fit and direct.

By the Short Titles Act, 1896, this Act may be cited as the Poor Relief Act, 1819.

These sections of 59 Geo. III. c. 12, viz. 8 to 10 and 14 to 16, were repealed by the Statute Law Revision Act, 1873, but the powers contained in them were given to churchwardens and overseers for the provision of places for the reception of dead

59 Geo. III. c. 12.

bodies until interment, by s. 42 of 15 & 16 Vict. c. 85, *ante*, p. 133, and as that section still remains in force, the powers of these repealed sections would seem to be preserved for the purpose named in s. 42.

As to the transfer of powers to the parish council, see s. 6 of the Local Government Act, 1894, *ante*, p. 323.

Work-houses insufficient may be sold.

IX. And whereas it would be advisable to enable parishes to sell and dispose of their present workhouses, or any other houses or tenements belonging to such parishes, in cases where the same are insufficient and incapable of being enlarged or used as workhouses, and to apply the produce thereof in aid of building new workhouses; be it therefore enacted, that it shall and may be lawful for the churchwardens and overseers of the poor of any parish, and they are hereby authorised, by the direction of the inhabitants in vestry assembled, and with the consent of two justices, to be certified under their hands, to sell and dispose of any workhouse, or any other houses or tenements belonging to such parish, which shall be found to be insufficient or unfit for the purpose, with the site thereof, and the out-houses, offices, yards, and gardens thereto belonging, for the best price and prices that can be reasonably obtained, and to convey and assure the same to the purchaser or purchasers thereof, his, her, or their heirs and assigns, or as he, she, or they shall direct, and to apply the produce of such sale, after deducting the reasonable expenses thereof, towards the purchase or building of a new workhouse, or in or towards the payment of any money to be borrowed under the authority of this Act, as the inhabitants in vestry shall direct.

Where no poorhouse, &c., can be procured in

X. And whereas there may be parishes in which no sufficient poorhouse or workhouse can be procured for the accommodation of the poor thereof; be it further

enacted, that it shall and may be lawful for the churchwardens and overseers of the poor of every such parish, by the direction of the inhabitants thereof in vestry assembled, to purchase or hire any suitable and convenient house or houses, building or buildings, for that purpose, in any adjoining parish, with the consent of two or more justices, such consent to be written upon or annexed to the agreement for purchasing or hiring such house or houses, building or buildings: Provided always, that no such house or building shall be situate more than three miles from the parish for which the same shall be purchased or hired.

the parish, adjoining parish may be resorted to.

* * * * * *

XIV. Provided, and be it further enacted, that no sum exceeding the amount of a rate or assessment at one shilling in the pound upon the annual value of the property in any parish assessable to the rates for the relief of the poor shall be raised, expended, or applied, in any one year, in purchasing, building, and repairing any buildings or land by this Act authorised to be purchased, taken, built, or repaired, and in fitting up, preparing, and furnishing such buildings, and in stocking such land, or for any one or more of such purposes or objects, unless the major part of the inhabitants and occupiers assessed to the relief of the poor, in vestry assembled, shall consent thereto, nor until two third parts in value of all the inhabitants and occupiers so assessed as aforesaid (whether present in vestry or not) shall have also signed their consent thereto in the vestry or parish book.

Limiting the amount to be raised for buildings and the purchase of lands, &c.

XV. And be it further enacted, that in every case where the inhabitants of any parish shall, in manner aforesaid, consent that a greater sum than the amount

Power to raise further sums by loans or by the

59 Geo. III. c. 12. sale of annuities.

of a rate or assessment of one shilling in the pound will raise shall be expended in one year for all or any of such purposes and objects, it shall be lawful for the churchwardens and overseers of the poor of such parish, with the consent of such majority as aforesaid of the inhabitants and occupiers thereof, to be given and signed in the manner hereinbefore directed (after the rate or rates at or amounting to one shilling in the pound shall have been actually levied and applied for such purposes or some of them), to raise any additional sum or sums by loan or by sale of an annuity or of annuities on any life or lives not being under the age of fifty years respectively, or for any certain term not exceeding fifteen years, so as the whole sum to be raised for all or any of such purposes by loan and by [*Sic*] the sale of annuities, or by either of such means, shall not be more than five shillings in the pound of or upon the true annual value of the property which shall in such parish be assessed to the poor's rates of every proposal for any such annuity being first stated to and approved of the inhabitants and occupiers of such parish in vestry assembled); and the churchwardens and overseers of the poor shall and they are hereby authorised, in the names and on the behalf of the inhabitants of the parish, to sign and execute securities for the money which shall be so borrowed, and for the annuities to be so granted, and by every such security to charge the produce of the future rates to be made for the relief of the poor of every such parish with the repayment of the principal sum which shall have been so borrowed, and the interest thereof, or with the payment of the annuity thereby granted (as the case may be), at and upon the days and times and in such manner and proportions as in and by the security for every such loan and annuity

Future rates charged with loans and annuities.

respectively shall be appointed and expressed for the payment thereof; and the money to be raised by such future rates shall be subject and liable to the payment of every such loan and the interest thereof, and of every such annuity accordingly.

No greater rate than one shilling in the pound shall be charged on future rates, unless with consent of two-thirds in value of the proprietors of premises.

XVI. Provided nevertheless, and be it enacted, that no greater sum in the whole than the amount of a rate or assessment at one shilling in the pound shall in any parish be charged upon the future rates thereof, unless two third parts in value of the proprietors of messuages, lands, and tenements within such parish (whether for estates of freehold or copyhold, or by virtue of leases for terms of not less than fifteen years absolute or determinable upon a life or lives) shall have consented to raise the money for which the charge or security shall purport to be made, such consents to be given by writing under the hands of all persons and corporations sole, and the consent of every corporation aggregate under the hand of the president, head, or chief member thereof for the time being, and the consents of femes covert, minors, insane persons, and persons out of the kingdom, by and under the hands of their respective husbands, guardians, committees, trustees, attornies, or agents, who are respectively authorised to give such consents; and the consent of the major part of the trustees for any charitable or other purpose shall be sufficient in respect of the trust estates.

7 & 8 Vict. c. 101.

7 & 8 VICT. C. 101.

An Act for the further Amendment of the Laws relating to the Poor in England. [9th August, 1844.]

* * * * * *

Burials of paupers.

XXXI. And be it declared and enacted, that it shall be lawful for guardians, or where there are no guardians for the overseers, to bury the body of any poor person which may be within their parish or union respectively, and to charge the expence thereof to any parish under their control to which such person may have been chargeable, or in which he may have died, or otherwise in which such body may be; and unless the guardians in compliance with the desire expressed by such person in his lifetime, or by any of his relations, or for any other cause, direct the body of such poor person to be buried in the churchyard or burial ground of the parish to which such person has been chargeable (which they are hereby authorised to do), every dead body which the guardians or any of their officers duly authorised shall direct to be buried at the expence of the poor rates shall (unless the deceased person or the husband or wife or next-of-kin of such deceased person have otherwise desired) be buried in the churchyard or other consecrated burial ground in or belonging to the parish, division of parish, chapelry, or place in which the death may have occurred; and in all places of burial under the direction of the guardians or overseers as aforesaid the fee or fees payable by the custom of the place in which the burial may take place, or under the provisions of any Act of Parliament, shall be paid out

of the poor rates, for the burial of each such body, to the person or persons who by such custom or under such Act may be entitled to receive any fee: 7 & 8 Vict. c. 101.

Provided always, that it shall not be lawful for any officer connected with the relief of the poor to receive any money for the burial of the body of any poor person which may be within the parish, division of parish, chapelry, or place in which the death may have occurred, or to act as undertaker for personal gain or reward in the burial of any such body, or to receive any money from any dissecting school or school of anatomy, or hospital, or from any person or persons to whom any such body may be delivered, or to derive any personal emolument whatever for or in respect of the burial or disposal of any such body, and any such officer offending as aforesaid shall, on conviction thereof before any two justices, forfeit and pay a sum not exceeding five pounds.

* * * * * *

LVI. And be it enacted, that for purposes of relief, settlement, and removal of poor persons, and the burial of the poor, the workhouse of any union or parish and every district school shall be considered as situate in the parish to which each poor person respectively to be relieved, removed, or buried, or otherwise concerned in any such purpose, is or has been chargeable; provided always, that every birth and death within any such workhouse or building shall be registered in the parish or place in which such workhouse or building is locally situated; and all fees for registering births and deaths in any such workhouse or building shall be charged by the guardians to the parish or union to which the person dying or the mother of the child respectively is chargeable. Workhouse and district schools to be deemed to be situate in every parish of an union, &c. Registry of births and deaths therein.

7 & 8 Vict. c. 101.

As to the power of guardians to bury poor persons dying out of the limits of the parish from which they are in receipt of relief, see s. 17 of 12 & 13 Vict. c. 103, *infra*.

The overseers of a parish are not bound to bury the body of a pauper lying in the parish, but not in a parochial house; although such pauper was a married woman, whose husband is settled in the parish and receiving relief there (*R.* v. *Stewart*, [1840] 12 A. & E. 773).

As to registration in case of a workhouse in two parishes, and as to the provision for deaths of paupers in district schools and asylums, see the Divided Parishes Act, 1876 (39 & 40 Vict. c. 61), s. 21, *infra*, p. 478.

By the Short Titles Act, 1896, this Act may be cited as the Poor Law Amendment Act, 1844.

12 & 13 Vict. c. 103.

12 & 13 VICT. C. 103.

An Act to continue an Act of the last Session of Parliament for charging the Maintenance of certain Poor Persons in Unions upon the Common Fund, and to make certain Amendments in the Laws for the Relief of the Poor. [1st August, 1849.]

* * * * * *

Guardians may appropriate certain property of paupers.

XVI. That where any pauper shall have in his possession or belonging to him any money or valuable security for money, the guardians of the union or parish within which such pauper is chargeable may take and appropriate so much of such money or the produce of such security, or recover the same as a debt before any local court, as will reimburse the said guardians for the amount expended by them, whether on behalf of the common fund or of any parish, in the relief of such pauper, during the period of twelve months prior to

such taking and appropriation or prior to such proceeding for the recovery thereof (as the case may be); and in the event of the death of any pauper having in his possession or belonging to him any money or property, the guardians of the union or parish wherein such pauper shall die may reimburse themselves the expenses incurred by them in and about the burial of such pauper, and in and about the maintenance of such pauper at any time during the twelve months previous to the decease. 12 & 13 Vict. c. 103.

A judgment is a "valuable security" within the meaning of this section (*Guardians of West Ham Union* v. *Ovens*, [1872] L. R. 8 Ex. 37).

A person died intestate, who at the time of his death had been for many years supported at a county lunatic asylum as a lunatic, at the expense of the union to which he belonged. At that time he was beneficially interested in a sum of 400*l.* 3 per cent. Consols, standing in the name of trustees. His sister, the only next-of-kin or person entitled to his property, was also a pauper lunatic. The Court held that the guardians of the union to which the deceased belonged were, under this section, creditors of the deceased, and (they having cited the next-of-kin) granted administration to them for the use and benefit of the lunatic next-of-kin (*Windeatt* v. *Sharland*, [1871] L. R. 2 P. & D. 217 and 266; 41 L. J. P. 9; 25 L. T. N. S. 574; 20 W. R. 211).

This section giving the guardians power, in the event of the death of a pauper having property belonging to him, to reimburse themselves the expenses of the maintenance of such pauper during the twelve months previous to the decease, constitutes the guardians ordinary and not preferential creditors for the amount so expended by them, and the executor of such pauper is therefore entitled to retain a debt due from the pauper's estate to himself before satisfying the claim of the guardians (*Laver* v. *Botham & Sons: the Guardians of Chesterfield Union, Claimants*, [1895] 1 Q. B. 59).

XVII. That it shall be lawful for the guardians of any union or parish to pay the costs of the burial of any poor person dying out of the limits of such union or Expenses of burial recoverable as loans.

12 & 13 Vict. c. 103.

parish who was at the time of the death in receipt of relief from such guardians, and that the costs of burying any poor person by or under the direction of any guardians or overseers shall be recoverable in like manner and from the same parties as the cost of any relief (if given to such person when living) would have been recoverable.

* * * * * *

By the Short Titles Act, 1896, this Act may be cited as the Poor Law Amendment Act, 1849.

13 & 14 Vict. c. 101.

13 & 14 VICT. C. 101.

An Act to continue two Acts passed in the twelfth and thirteenth years of the reign of Her Majesty, for charging the Maintenance of certain poor Persons in Unions in England and Wales upon the Common Fund; and to make certain Amendments in the Laws for the Relief of the Poor.

[14th August, 1850.]

* * * * * *

Burials of poor persons dying in workhouses.

II. And be it enacted, that it shall be lawful for the guardians of any union to contribute out of the common fund, or for the guardians of any parish to contribute out of the poor rates of such parish, such sum of money as the poor law board shall approve, towards the enlargement of any churchyard or consecrated public burial ground in the parish wherein the workhouse shall be situated, or in any other parish of the union, or towards the obtaining of any such consecrated public burial ground, and where any such burial ground shall be enlarged or obtained with the aid of such contribution,

it shall be lawful for them to bury therein the dead body of any poor person dying in such workhouse: provided always, that nothing in this Act contained shall discharge or vary the obligation now imposed by law upon the guardians to bury the dead body of such poor person elsewhere, in case the deceased person, or the husband, or wife, or next of kin of such deceased person, shall have so requested: provided also, that in all cases of burial under the direction of the guardians as aforesaid the fee or fees payable by the custom of the place where the burial may be, or under the provisions of any Act of Parliament, shall be paid by the said guardians for the burial of each such body to the person or persons who by such custom or under such Act shall be entitled to receive such fee or fees, and charged by them in like manner as the relief to the deceased when living was last chargeable.

13 & 14 Vict. c. 101.

Contribution to enlarge or obtain burial grounds.

* * * * * *

XI. And be it enacted, that the several words used in this Act shall be construed in the manner prescribed by the said recited Act of the fifth year of the reign of his late Majesty King William the Fourth, and the statutes explaining and extending it; and that all the provisions of the said last-mentioned Act and of the said statutes not repealed shall extend to this Act, except where any such provision would be inconsistent with anything herein contained.

Construction of Act.

XII. And be it enacted, that this Act shall extend only to England and Wales.

Act to extend only to England and Wales.

* * * * * *

By the Short Titles Act, 1896, this Act may be cited as the Poor Law Amendment Act, 1850.

18 & 19 Vict. c. 79.

18 & 19 VICT. C. 79.

An Act to amend the Law regarding the Burial of Poor Persons by Guardians and Overseers of the Poor.

[30th July, 1855.]

7 & 8 Vict. c. 101, s. 31.

WHEREAS by the Act of the eighth year of the reign of Her Majesty, chapter one hundred and one, provisions were made for the burial of poor persons by guardians and overseers of the poor: And whereas, in consequence of the closing of the burial grounds in many parishes, and the want of adequate space in others, great difficulty is frequently found in carrying into execution the above provisions, and it is expedient that other provisions should be made: be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same:

The preamble was repealed by the Statute Law Revision Act, 1892.

By the Short Titles Act, 1896, this Act may be referred to as the Poor (Burials) Act, 1855.

The provision referred to is s. 31 of 7 & 8 Vict. c. 101, set out *supra*, p. 464.

Where burial ground of parish closed or over-crowded, guardians or overseers may bury in neighbouring parish.

I. That where the guardians of any union or parish, or any of their officers duly authorised in that behalf, or the overseers of any parish not under a board of guardians, shall undertake the burial of any poor person, or shall contribute money or other aid towards the same, and the burial cannot take place in the parish where, according to the provisions of the said Act, the same would have been required to take place, by reason of the public burial ground of such

parish having been closed, and no other having been provided, or where, in consequence of the crowded state of such burial ground, the guardians or overseers respectively are of opinion that the burial ground of such dead body therein would be improper, it shall be lawful to bury such body in a public burial ground (some part of which has been consecrated) of or in some other parish as near as conveniently may be to the parish wherein the burial would have been required to take place according to the provisions of the said Act; Provided, that in all cases of burial under the direction of the guardians or their officers, or of the overseers, as aforesaid, the fee or fees payable by the custom of the place where the burial may be, or under the provisions of any Act of Parliament, shall be paid by the said guardians or overseers for the burial of each such body to the person or persons who by such custom or under such Act of Parliament shall be entitled to receive such fee or fees. 18 & 19 Vict. c. 79.

Extra-parochial places are to be deemed parishes by the name designated in the Registrar-General's Report on the census for all the purposes of the assessment (*inter alia*) to the burial of the dead. The justices shall appoint overseers for such places (20 Vict. c. 19, s. 1, *supra*).

By the common law, any person dying away from home, and having no friends to provide for burial, must be decently interred by the person in whose house the body lies. Public bodies have similar duties, *e.g.*, governors of hospitals (*R.* v. *Stewart*, [1840] 12 A. & E. 773). A parent, if able, must bury his child, but is not bound to incur a debt for the purpose (*R.* v. *Vann*, 21 L. J. N. S. M. C. 39).

See Introduction, *ante*, p. 39.

II. The guardians of any union or parish, or the overseers of any parish not under a board of guardians, may from time to time enter into agreements with the proprietors of any cemetery established under the Power to enter into agreements with cemetery companies or

18 & 19 Vict. c. 79. burial boards.

authority of Parliament, or with any burial board duly constituted under the statutes in that behalf, for the burial of the dead bodies of any poor persons which such guardians or overseers may undertake to bury, or towards the burial whereof they may render assistance: and thereupon the burial of any such body, under the directions of the said guardians or their officer, or of such overseers, or with their aid respectively, in such cemetery, or in the burial ground of such burial board (unless the deceased person, or the husband or wife or next of kin of such deceased person, have otherwise expressly desired), shall be lawful: Provided, however, that no such agreement shall be valid unless made in such form and with such stipulations as the Poor Law Board shall approve.

Construction of words to be as in 4 & 5 Will. IV. c. 76, &c.

III. The words contained in this Act shall be construed in like manner as in the Act of the fifth year of King William the Fourth, chapter seventy-six, and in the several Acts incorporated therewith.

The Act 4 & 5 Will. IV. c. 76, s. 109, enacts as follows:—The word "*guardian*" shall be construed to mean and include any visitor, governor, director, manager, acting guardian, vestryman, or other officer in a parish or union, appointed or entitled to act as a manager of the poor, and in the distribution or ordering of the relief to the poor from the poor rate, under any general or local Act of Parliament; the word "*officer*" shall be construed to extend to any clergyman, schoolmaster, person duly licensed to practise as a medical man, vestry clerk, treasurer, collector, assistant overseer, governor, master or mistress of a workhouse, or any other person who shall be employed in any parish or union in carrying this Act or the laws for the relief of the poor into execution, and whether performing one or more of the above-mentioned functions; the word "*overseer*" shall be construed to mean and include overseers of the poor, churchwardens, so far as they are authorised or required by law to act in the manage-

ment or relief of the poor, or in the collection or distribution of the poor rate, assistant overseer, or any other subordinate officer, whether paid or unpaid, in any parish or union, who shall be employed therein in carrying this Act or the laws for the relief of the poor into execution; the word "*parish*" shall be construed to include any parish, city, borough, town, township, liberty, precinct, vill, village, hamlet, tithing, chapelry, or any other place or division or district of a place, maintaining its own poor, whether parochial or extra-parochial; the word "*person*" shall be construed to include any body politic, corporate, or collegiate, aggregate or sole, as well as any individual; the word "*poor*" shall be construed to include any pauper or poor or indigent person applying for or receiving relief from the poor rate in England or Wales, or chargeable thereto; the word "*union*" shall be construed to include any number of parishes united for any purpose whatever under the provisions of this Act, or incorporated under the Act made and passed in the twenty-second year of his late Majesty King George the Third, intituled "An Act for the better Relief and Employment of the Poor," or incorporated for the relief or maintenance of the poor under any local Act; and wherever in this Act, in describing any person or party, matter or thing, the word importing the singular number or the masculine gender only is used, the same shall be understood to include and shall be applied to several persons or parties as well as one person or party, and females as well as males, and several matters or things as well as one matter or thing respectively, unless there be something in the subject or context repugnant to such construction. (See also the Interpretation Act, 1889, 52 & 53 Vict. c. 63.)

18 & 19 Vict. c. 79.

20 Vict. c. 19.

20 VICT. C. 19.

An Act to provide for the Relief of the Poor in extra-Parochial Places. [21st March, 1857.]

WHEREAS it is desirable that provision should be made for the relief of the poor in extra-parochial places; be it therefore enacted as follows:

Extra-parochial places where no poor rate levied, to be deemed parishes and justice to appoint overseers.

I. After the 31st day of December, 1857, every place entered separately in the report of the registrar-general on the last census which now is or is reputed to be extra-parochial wherein no rate is levied for the relief of the poor, shall for all purposes of the assessment to the poor rate, to the relief of the poor, the county, police, or borough rate, the burial of the dead, the removal of nuisances, the registration of parliamentary and municipal voters, and the registration of births and deaths, be deemed a parish for such purposes, and shall be designated by the name which is assigned to it in such report; and the justices of the peace having jurisdiction over such place or over the greater part thereof shall appoint overseers of the poor therein; and with respect to any other place being or reputed to be extra-parochial, and wherein no rate is levied for the relief of the poor, such justices may appoint overseers of the poor therein; notwithstanding anything contained in the hundred and first chapter of the statute passed in the session of Parliament of the seventh and eighth years of her present Majesty.

The title, Extra-parochial Places Act, 1857, was given to this Act by the Short Titles Act, 1896.

See 31 & 32 Vict. c. 122, s. 27, *post*.

Where there is no church or chapel the publication of the rate is provided for by 45 & 46 Vict. c. 20, s. 4.

20 Vict. c. 19.

II. The words used in this Act shall be construed in a like manner as in the seventy-sixth chapter of the statute passed in the fourth and fifth years of King William the Fourth, and the provisions contained therein, and in the subsequent Acts explaining and extending the same and not repealed, shall, so far as they shall be consistent herewith, be extended to this Act.

See note to s. 3 of 18 & 19 Vict. c. 79, *ante*, p. 472.

28 & 29 VICT. C. 79.

28 & 29 Vict. c. 79.

An Act to provide for the better Distribution of the Charge for the Relief of the Poor. [29th June, 1865.]

So much of s. 26 of 4 & 5 Will. IV. c. 76 as requires parishes in unions to defray expenses of their own poor repealed; and expenses of relief and burial of paupers and in respect of vaccination and registration to be charged to the common fund.

I. *From and after the 25th day of March, 1866, so much of the twenty-sixth section of the fourth and fifth William the Fourth, chapter seventy-six, as requires that each of the parishes in a union formed under the authority of that Act shall be separately chargeable with and liable to defray the expenses of its own poor, whether relieved in or out of the workhouse of such union, shall be repealed; and* all the cost of the relief to the poor, and the expenses of the burial of the dead body of any poor person under the direction of the guardians, or any of their officers duly authorised, in such union thenceforth incurred, and all charges thenceforth incurred by the guardians of such union in respect of vaccination and registration fees and expenses, shall be charged upon the common fund thereof.

The words in italics were repealed by the Statute Law Revision Act, 1893.

* * * * * *

28 & 29 Vict. c. 79.

What to be considered for purpose of burial, the parish of a pauper dying in the workhouse.

X. For the purposes of the burial of any poor person dying in the workhouse of any union, such workhouse shall be considered as situated in the parish of the union where such poor person resided last previously to his removal to the workhouse.

* * * * * *

Interpretation of terms and applications of Acts.

XVI. The words herein used shall be interpreted in the manner prescribed by the statute of the fourth and fifth years of William the Fourth, chapter seventy-six, and the subsequent Acts amending or explaining the same, and the provisions in such Acts which apply to poor persons rendered chargeable upon the common fund by reason of their having become irremovable through the operation of the statutes in that behalf shall apply to all the poor in the union hereby rendered chargeable upon the common fund.

See note to s. 3 of 18 & 19 Vict. c. 79, *ante*, p. 472.

Short title.

XVII. This Act may be cited as the Union Chargeability Act, 1865.

31 & 32 Vict. c. 122.

31 & 32 VICT. C. 122.

An Act to make further Amendments in the Laws for the Relief of the Poor in England and Wales.

[31st July, 1868.

* * * * * *

Guardians may send idiots to asylums for idiots or idiotic or insane paupers to other workhouses, and pay expenses of

13. The guardians of any union or parish may, with the consent of the poor law board, send an idiotic pauper to an asylum or establishment for the reception and relief of idiots maintained at the charge of the county rate or by public subscription, and they may with the like consent send any idiotic, imbecile, or insane pauper who may lawfully be detained in a workhouse to the

workhouse of any other union or parish, with the consent of the guardians of such last-mentioned union or parish, and pay the cost of the maintenance, clothing, and lodging of such pauper in the asylum, establishment, or workhouse, as well as the cost of his conveyance thereto, or his removal therefrom, and the expenses of his burial when necessary. 31 & 32 Vict. c. 122. removal, maintenance, and burial.

* * * * * *

27. *From the twenty-fifth day of December next* every place which was or is reputed to be extra-parochial, whether entered by name in the report upon the census for the year One thousand eight hundred and fifty-one or not, for which an overseer has not been appointed, or for which no overseer shall be then acting, or which has not been then annexed to and incorporated with an adjoining parish, shall for all civil parochial purposes be annexed to and incorporated with the next adjoining parish with which it has the longest common boundary, and in case there shall be two or more parishes with which it shall have boundaries of equal extent, then with that parish which now contains the lowest amount of rateable value; and every accretion from the sea, whether natural or artificial, and the part of the sea-shore to the low-water mark, and the bank of every river to the middle of the stream which on the *said* twenty-fifth day of December next shall not be included within the boundaries or annexed to and incorporated with any parish shall for the same purposes be annexed to and incorporated with the parish to which such accretion, part or bank adjoins, in proportion to the extent of the common boundary. Provision for incorporation of certain extra-parochial places and accretions from the sea in adjoining parishes for civil purposes.

The words in italics were repealed by the Statute Law Revision Act, 1893.

* * * * * *

31 & 32 Vict. c. 122.

Interpretation of terms and application of Poor Law Acts.

45. The words used in this Act shall be construed in a like manner as in the Poor Law Amendment Act, 1834, and subsequent Acts amending and extending the same, and the provisions contained therein and in such subsequent Acts and not repealed shall, so far as they shall be consistent herewith, be extended to this Act.

See note to s. 3 of 18 & 19 Vict. c. 79, *ante*, p. 472.

46. This Act may be cited and described for all purposes as the Poor Law Amendment Act, 1868.

39 & 40 Vict. c. 61.

39 & 40 VICT. c. 61.

An Act to provide for the better Arrangement of Divided Parishes and other Local Areas, and to make sundry Amendments in the Law relating to the Relief of the Poor in England. [15th August, 1876.]

* * * * * *

Extension of 7 & 8 Vict. c. 101, s. 56, as to registration to the case of a workhouse situated in two parishes, and provision for deaths of paupers in district schools and asylums.

21. The provision as to the registration of births and deaths in a workhouse contained in the fifty-sixth section of the Poor Law Amendment Act, 1844, shall be extended to the case of a workhouse which is situated in two parishes, so that the registration shall take place in the parish to which the workhouse belongs, or if the parishes be not both in the same union then in that parish of the union to which the workhouse belongs in which any part of the workhouse is situated.

And when a union is comprised in any school or other district, the death of any pauper in the school or asylum of such district shall for the purposes of burial be deemed to have taken place in the parish of the union from which such pauper was sent to the said

school or asylum, or to the workhouse of the union, as the case may be, and the charges of the burial shall be borne by the common fund of such unions. 39 & 40 Vict. c. 61.

Section 56 of 7 & 8 Vict. c. 101 is set out *ante*, p. 465.

* * * * * *

45. This Act may be cited and described for all purposes as the Divided Parishes and Poor Law Amendment Act, 1876.

53 VICT. C. 5.

53 Vict. c. 5.

An Act to consolidate certain of the Enactments respecting Lunatics. [29th March, 1890.]

* * * * * *

Burial grounds.

258.—(1.) The visiting committee of an asylum, with the consent of the local authority by whom they are appointed, and a secretary of state, may provide for the burial of lunatics dying in the asylum and of the officers and servants belonging thereto,—

(*a.*) By appropriating any land already belonging to them or acquiring any land not exceeding in either case two acres for enlarging an existing burial ground, or for providing a new burial ground;

(*b.*) By agreeing with any corporation or persons or body of persons willing to provide for the burial of such lunatics and other persons aforesaid.

(2.) The committee may procure the consecration of a new or enlarged burial ground, and in the case of a new burial ground may provide for the appointment of a chaplain therein.

53 Vict. c. 5.

(3.) The incumbent of the parish in which a new or enlarged burial ground provided by a visiting committee is situate, shall not be entitled to any fee for the interment of any person buried therein by direction of the committee.

This and the next section reproduce ss. 11, 12, and 13 of 18 & 19 Vict. c. 105, and s. 9 of 25 & 26 Vict. c. 111, which Acts were repealed by this Act.

Burial of lunatics.

259. Where a visiting committee undertakes the burial of any pauper lunatic, and the public burial ground of the parish where the death took place is closed or inconveniently crowded, the burial may take place in a public burial ground of some other parish, with the consent of the minister and churchwardens of that parish, and in that case the visiting committee shall pay to the person entitled thereto the burial fees payable under any Act, or according to the custom of the place of burial.

* * * * * *

Expenses of removal, discharge, and burial.

297. The necessary expenses attending the removal, discharge, or burial of a pauper lunatic in any institution for lunatics, shall be borne by the union to which the pauper is chargeable, or to the local authority liable for his maintenance, and shall be paid by the guardians of the union or by the treasurer of the local authority.

This section reproduces s. 120 of 16 & 17 Vict. c. 97, which was repealed by this Act.

Provisions of Act as to expenses to extend to pauper lunatics sent to asylums under any other Act.

298. The provisions of this Act for the payment of expenses in relation to pauper lunatics shall be applicable with respect to persons confined as pauper lunatics sent to any institution for lunatics under any other Act authorising their reception therein as pauper lunatics, and (save as herein otherwise provided concerning any lunatic who shall appear to have any real or personal

property applicable to his maintenance) with respect to all other lunatics sent to any institution for lunatics under any order of a justice or justices made before the commencement of this Act, or under a summary reception order made by two or more commissioners before or after the commencement of this Act, as if such last-mentioned lunatics were at the time of being so sent actually chargeable to the union from which they are sent. 53 Vict. c. 5.

This section reproduces s. 118 of 16 & 17 Vict. c. 97, which was repealed by this Act.

THE CHURCH BUILDING ACTS.

8 Geo. III. 45.

58 GEO. III. C. 45.

An Act for building and promoting the building of additional Churches in populous Parishes.

[30th May, 1818.]

By the Short Titles Act, 1896, this Act may be referred to as the Church Building Act, 1818, and the whole series of Acts upon the subject by the collective title of the Church Building Acts, 1818 to 1884.

This Act is repealed, so far as it confers power to enforce payment of any rate, by the Statute Law Revision Act, 1873.

WHEREAS the population of Great Britain, and more particularly in the metropolis and its vicinity, and in other cities and great towns, has greatly increased, and the churches and chapels now existing in the metropolis and its vicinity, and in many great and populous parishes and extra-parochial places, are inadequate to the accommodation of the inhabitants thereof: And whereas it is therefore necessary that such evil should be remedied, and that additional churches and chapels for the celebration of divine service according to the rites of the *united* Church of England *and Ireland* as by law established should be erected and maintained in such parishes and places, and that a certain number of free seats should be made therein: And whereas His Royal Highness the Prince Regent, acting in the name and on the behalf of His Majesty, is desirous of aiding his subjects in the establishing additional churches in such parishes and places as may require the same:

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58 Geo. III. c. 45.

X. And be it further enacted, that it shall be lawful for the said commissioners to appoint a secretary and clerk, and to employ such surveyors and other fit persons to make plans and estimates, and (if the commissioners shall deem the same necessary) surveys and reports, for the purpose of affording to the commissioners all such information as they may require for the purpose of ascertaining the best mode of providing fit and proper accommodation for the largest number of persons at the least expense, and may assign and pay to all such persons reasonable salaries or rewards for their services therein.

Commissioners may appoint secretary and clerk, and order surveys, reports, &c. and assign salaries.

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XII. And be it further enacted, that the said commissioners shall, as soon after their appointment as the obtaining necessary information will allow, draw up certain rules for their general proceedings, and shall fix and specify therein the largest amount of allowances to be granted for building any church, and make such other regulations as the said commissioners shall deem expedient and necessary to be fixed and known for the furtherance of the purposes of the Act, and from time to time, as occasion may require, shall have power to alter or vary any such regulations, and to make any such further or additional regulations as they may deem expedient; and all such rules and regulations shall be laid before His Majesty in council, who shall have power to approve or disallow the same.

Commissioners to draw up rules for their proceedings, which shall be laid before His Majesty in council.

XIII. And be it further enacted, that it shall be lawful for the said commissioners to make in His Majesty's name, out of the sum so appropriated by this Act, grants for building or to cause to be built churches or chapels in such parishes or extra-parochial places only in which there is a population of not less than four

Commissioners may grant or lend money for building churchs in parishes, &c. of a certain population,

58 Geo. III. c. 45.

in which there is want of church accommodation, &c.

thousand persons, and in which there is not accommodation in the churches or chapels therein for more than one fourth part of such population to attend divine service according to the rites of the *united* Church of England *and Ireland*, or in which there shall appear to the said commissioners to be one thousand persons resident more than four miles from any such church or chapel, ... and also to make grants or loans to assist in building such churches and chapels in such other parishes or places as may contain a like population, and may equally require further accommodation for divine service, but in which the said commissioners may deem the parishioners and inhabitants thereof capable of bearing a part of the expense of erecting such churches and chapels, or of repaying the same by instalments if advanced by way of loan.

Commissioners may make grants and advance money to build churches in parishes, &c. where a certain proportion of the expense is raised by rate or subscription.

XIV. it shall be lawful for the said commissioners, upon any parish or extra-parochial place offering to contribute or raise by rates or subscription, or by rates aided by subscription, such proportion of the expense of building any church or chapel or churches or chapels which may be required in any such parish or extra-parochial place, as shall have been fixed as a proper proportion by the said commissioners according to any such rules and regulations as aforesaid, or shall be deemed by the said commissioners a proper proportion, and they are hereby empowered, to grant to any such parish or extra-parochial place the remaining sum necessary to build any such church or churches or chapel or chapels, and to advance and lend to such parish or extra-parochial place any part of the proportion so proposed to be raised by rates as aforesaid.

Commissioners, in selecting

XV. Provided always, and be it further enacted, that the said commissioners, in the selections of parishes and

extra-parochial places for making their distribution of the sums granted by this Act, shall have regard to the amount of population in such parishes and extra-parochial places, and also to the disproportion between the number of inhabitants and the present accommodation for attendance upon divine service according to the rites of the united Church of England and Ireland as by law established, and in giving preference among such parishes and extra-parochial places shall have regard to the proportion of the expense of affording the accommodation required which shall be offered to be contributed or raised in aid of the purposes of this Act towards the building churches or chapels in such respective parishes or extra-parochial places, and to the pecuniary ability of the inhabitants of such parishes or places; and the said commissioners, in giving preference as between parishes and extra-parochial places not offering to contribute any proportion of such expense as aforesaid, shall have regard to the order of priority in which parishes and extra-parochial places, under similar circumstances as to population and disproportion between such population and the accommodation afforded by the churches and chapels therein, shall have provided, and given notice to the commissioners of having provided, sites for the churches intended to be built in such respective parishes or extra-parochial places.

Parishes, &c. for grants, shall have regard to their relative proportions of population and want of accommodation, and in giving preference shall have regard to the proportion of expense offered to be contributed, &c., and to the order of priority in providing sites.

XVI. And be it further enacted, that in every case in which the said commissioners shall be of opinion that it will be expedient to divide any parish into two or more distinct and separate parishes for all ecclesiastical purposes whatever, it shall be lawful for the said commissioners, with the consent of the bishop of the diocese in which such parish is locally situated, signified under his hand and seal, to apply to the patron or patrons of the

Upon representation of the commissioners in manner stated, parishes may be divided into separate parishes for all eccle-

58 Geo. III. c. 45. siastical purposes.

church of such parish for his consent to make such division, and for such patron or patrons to signify his or their consent thereto under his hand and seal; and the said commissioners shall, upon the consent of the said patron or patrons so signified, represent the whole matter to His Majesty in council, and shall state in such representation the bounds by which it is proposed, with such consent as aforesaid, to divide such parish, together with the relative and respective proportions of glebe land, tithes, moduses, or other endowments which will by such division arise and accrue and remain and be within each of such respective divisions, and also the relative proportions of the estimated amount of the value or produce of fees, oblations, offerings, or other ecclesiastical dues or profits, which may arise and accrue within each of such respective divisions; and if thereupon His Majesty in council shall think fit to direct such division to be made, such order of His Majesty in council shall be valid and good in law for the purpose of effecting such division: Provided always, that no such division of any parish into distinct parishes shall completely take effect, until after the death, resignation, or other avoidance of the existing incumbent of the parish to be divided.

Tithes, &c. to belong to and be recoverable by the incumbents of the divisions.

XVII. Provided always, and be it further enacted, that all tithes, moduses, endowments, or other ecclesiastical dues or profits belonging to the incumbent of any such parish, whether by endowment, prescription, usage, or otherwise, shall, when so divided as aforesaid, belong to and be recoverable by the incumbents of the churches of each of the divisions respectively of the parish to which they shall be assigned, in like manner in every respect as they were before recoverable by the incumbent of the original parish.

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XIX. And be it further enacted, that every such distinct and separate parish as aforesaid shall, when such division as aforesaid shall become complete by the death, resignation, or other avoidance of the existing incumbent of the original parish, be deemed either a rectory, vicarage donative, or perpetual curacy, and the spiritual person serving the same the rector, vicar, or perpetual curate thereof, or person having cure of souls therein, according to the nature of the original church of the parish so divided, and shall be for ever thereafter subject to the laws, provisions, and regulations, as to presentation and appointment, and as to institution, collation, induction, or license, and to all such jurisdiction of the bishop, or other jurisdiction, and to holding benefices, as are by law applicable to the original parish. 58 Geo. III. c. 45. New churches, when division complete, to be rectories, vicarages, or perpetual curacies, like original parish.

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XXI. And be it further enacted, that in any case in which the said commissioners shall be of opinion that it is not expedient to divide any populous parish or extra-parochial place into such complete, separate, and distinct parishes as aforesaid, but that it is expedient to divide the same into such ecclesiastical districts as they, with the consent of the bishop signified under his hand and seal, may deem necessary for the purpose of affording accommodation for the attending divine service according to the rites of the united Church of England and Ireland to persons residing therein, in the churches and parochial chapels already built, or in additional churches or chapels to be built therein, and as may appear to such commissioners to be convenient for the enabling the spiritual person or persons who may serve such churches or chapels to perform all ecclesiastical duties within the districts attached to such respective churches and chapels, and for the due ecclesiastical superinten- Upon representation of the commissioners parishes may be divided into ecclesiastical districts; or commissioners may build or aid in building chapels, to be served by curates to be appointed by the incumbent of the parish.

58 Geo. III. c. 45.

dence of such district, and the preservation and improvement of the religious and moral habits of the persons residing therein, the said commissioners shall represent such opinion to His Majesty in council, and shall state in such representation the bounds by which such districts are proposed to be described, and if thereupon His Majesty in council shall think fit to direct such division to be made, such order of His Majesty in council shall be valid and good in law for the purpose of effecting such division; or in any case in which the said commissioners shall be of opinion that it is not expedient to make any such division into such ecclesiastical districts as aforesaid, the said commissioners may build or aid the building of any additional chapels in any such parishes or extra-parochial places, to be served by curates to be respectively nominated and appointed by the respective incumbents of the churches of the respective parishes or extra-parochial places, and licensed by the bishop of the diocese; such curates to be paid such salaries as shall be assigned by the said commissioners under the provisions of this Act in manner hereinafter directed.

New parishes and districts, when made, to be described, and description of boundaries to be registered in registry of diocese.

XXII. And be it further enacted, that the several new parishes created by any such complete division as aforesaid, and also the several districts of any parish or extra-parochial place, where any such division thereof shall have been so made as aforesaid, shall be ascertained and marked out by described bounds; and the description of such bounds shall be registered in the office of registry of the diocese, and notice thereof given in such manner as the commissioners shall deem necessary and direct for that purpose.

Power to alter such boundaries.

XXIII. And be it further enacted, that if His Majesty in council, upon the representation of the said commis-

sioners, made with the consent of the bishop of the diocese signified under his hand and seal, shall think fit to alter such boundaries at any time within five years after such enrolment, such order in council shall be valid and good in law for the purpose of effecting such alteration, and the same shall be registered in like manner as is above mentioned. 58 Geo. III. c. 45.

Districts to be separate district parishes for ecclesiastical purposes.

XXIV. And be it further enacted, that such boundaries shall continue and be the boundaries of such parishes or districts respectively, unless so altered, and such districts shall thereupon become and be called district parishes by such names as shall be given to them respectively in the instrument so enrolled as aforesaid, and shall become and be separate and distinct district parishes; and the churches and chapels respectively assigned to such districts shall, when duly consecrated for that purpose, become and be the district parish churches of such district parishes for all purposes of ecclesiastical worship and performance of ecclesiastical duties, and as to all marriages, christenings, churchings, and burials, and the registry thereof respectively within the same, and in relation to all fees, oblations, and offerings, and the demanding, suing, and prosecuting for and recovering the same, and as to all other purposes whatsoever, save and except as is in this Act particularly excepted.

Churches and chapels of such districts to be deemed perpetual curacies, &c.

XXV. And be it further enacted, that every church and chapel built or acquired under the provisions of this Act, and appropriated to any such district parish so made under the provisions of this Act, shall be deemed a perpetual curacy, and shall be considered in law as a benefice presentative, so far only as that the license thereto shall operate in the same manner as institution to any such benefice, and shall render voidable other

58 Geo. III. c. 45.

livings in like manner as institution to any such benefice; and the spiritual person serving the same shall be deemed the incumbent thereof; and such incumbents shall have perpetual succession, and shall be and are hereby declared to be bodies politic and corporate, and may receive and take such endowments in lands or tithes or both, or any such augmentation as shall be granted to them or their successors; and all such incumbents and all persons presenting or appointing any such incumbents shall respectively be subject to all jurisdictions and laws, ecclesiastical or common, and to all provisions, regulations, penalties, and forfeitures contained in any Acts of Parliament in force relating thereto respectively; and in case of any failure or neglect in not presenting or nominating any such incumbent for the space of six months, such presentation or appointment shall thereupon lapse as in cases of actual benefices.

No such parish or district church or chapel to be held with the original church, &c.

XXVI. Provided also, and be it further enacted, that no such church or chapel of any such parish or district parish, created according to the provisions of this Act, shall be tenable or holden with the original church of the parish or extra-parochial place out of which such parish or district parish shall have been taken, or with the church or chapel of any other such parish or district parish.

All Acts of Parliament, &c. relating to publishing banns of marriage, marriages, &c. to apply to such churches and chapels, &c.

XXVII. And be it further enacted, that all Acts of Parliament, laws, and customs, relating to publishing banns of marriage, marriages, christenings, churchings, and burials, and the registering thereof, and to all ecclesiastical fees, oblations, or offerings, shall apply to such separate and distinct parishes and district parishes so made as aforesaid, when they shall so become complete, separate, and distinct parishes or district parishes under

the provisions of this Act, after the death, resignation, or other avoidance of the existing incumbents respectively in each such parish or extra-parochial place, and to the churches and chapels thereof, and to the ecclesiastical persons having cure of souls or serving the same, in like manner in every respect as if the same respectively had been ancient, separate, and distinct parishes and parish churches by law, to all intents and purposes. 58 Geo. III. c. 45.

XXVIII. Provided always, and be it further enacted, that no banns of matrimony shall be published, or marriages celebrated or solemnised, or baptisms or churchings had by any person whatever within any church or chapel of any such separate and distinct parish so made by any such division as aforesaid or in any private house therein, or within any such district church or chapel, or in any private house within such district, nor shall any burials be performed within any cemetery appertaining or belonging to any such church or chapel by any person whatever except by the incumbent of the church of the parish or extra-parochial place from which such parish shall have been separated, or some curate of such incumbent duly licensed in that behalf, until after the death, resignation, or other avoidance of the spiritual person who shall be the incumbent of the church of the parish or the extra-parochial place at the time of the consecration of any such church or chapel of any such separated parish or district parish; and from and after the death, resignation, or other avoidance of the then incumbent, to be certified under and according to the provisions of this Act, banns of matrimony may be published and marriages celebrated and solemnised, and baptisms, burials, and churchings had, within the church or chapel

Banns not to be published, or marriages, &c. solemnised in any district church, &c. until after the death, &c. of the person who was incumbent of the parish church when the district church, &c. was consecrated.

Validity of banns, marriages, &c. in district church, &c. afterwards.

58 Geo. III. c. 45.

of any such separated parish or district parish, provided the same be respectively published, celebrated, solemnised, and had according to the laws and canons in force within the realm in that behalf; and all such banns as shall be published, and also all and every such marriage and marriages as shall be celebrated and solemnised in any such church or chapel, after the entries, under and according to the provisions of this Act, of the notification under the hand and seal of the bishop of the diocese of the death, resignation, or other avoidance of the incumbent of the church of the parish or extra-parochial place, shall be as good, valid, and effectual to all intents and purposes, as if the same were published, celebrated, and solemnised in the church of the parish or extra-parochial place in which the same shall be situate.

Death, &c. of incumbent of parish church to be notified by bishop, and entered in register books of the parish church and district church, &c.; and such entries to be evidence of the commencement of publication of banns, &c. in the district church, &c.

XXIX. And be it further enacted, that the death, resignation, or other avoidance of the spiritual person, who was the incumbent of the church of any parish and extra-parochial place in which any such separated parish or district church or chapel shall be so consecrated as aforesaid at the time of such consecration, shall be notified by the bishop of the diocese under his hand and seal to the spiritual person then serving the church or chapel, and to the churchwardens of the parish or place in which the church or chapel shall be situate; and such notification shall be preserved with and copies thereof shall be entered in the books of registers of marriages, births, and burials of the church of the parish or extra-parochial place; and copies of such notifications shall be also entered in the books of registers to be provided for entering the publications of banns and solemnisation of marriages and the baptisms and burials in such chapels; and such entries shall be

authenticated by the churchwardens of such churches and chapels respectively, and shall be sufficient evidence of the period of commencement, under the provisions of this Act, of the publication of banns and solemnisation of marriages and baptisms and performance of burials in any such chapel or any cemetery thereof. 58 Geo. III. c. 45.

Division into district parishes only not to affect glebe, tithes, &c. of original parish.

XXX. And be it further enacted, that such division of any parish into district parishes only, and not into complete, separate, and distinct parishes, shall not in any manner affect any land, glebe, tithes, moduses, or endowment of or belonging to the original church of the parish or extra-parochial place; all which shall continue to belong to the incumbent thereof, and to be holden, demanded, taken, and received by him in like manner to all intents and purposes, as if no such division had taken place; and the original parish shall remain and continue a parish as to all such glebe land, tithes, moduses, and endowment, and all dues, rights, and remedies in relation thereto, as if this Act had not passed.

Division into distinct parishes or district parishes not to affect poor or other parochial rates, &c. except church rates.

XXXI. And be it further enacted, that no divisions of any parish or extra-parochial place, whether it be divided into separate parishes with the consent of the patron and bishop of the diocese, or into district parishes, nor anything in this Act contained in relation thereto, shall affect or in any manner be construed to affect any parish or extra-parochial place so divided, or the persons residing therein in any other respect than in this Act particularly provided, or in any manner to apply to any poor or other parochial rates which may be raised in the parish or extra-parochial place so divided, or in any such separated parish or district parish, or to the maintenance or relief of poor persons, or to any title or claim to such relief, or to any

58 Geo. III. c. 45.

powers relating to any such rates, or holding vestries, or appointment or powers of parish officers, or any such relief or claim thereto, or to any Act or Acts of Parliament or law or custom relating thereto, save and except as to church rates, in so far as the same are regulated by the provisions of this Act; but the original parish shall to all such purposes remain and continue in law a parish to all intents, as if no such division thereof into separate parishes or district parishes had been made.

Commissioners may ascertain and make compensation for diminution of fees, oblations, and offerings, consequent upon the division.

XXXII. And be it further enacted, that the said commissioners may ascertain the average amount, in any parish or extra-parochial place, of all fees, oblations, and offerings, whether voluntary or otherwise, for the three years preceding the making any such division into district parishes, and also for each year subsequent to such division during the incumbency of the existing incumbent, and may for that purpose summon and examine upon oath the incumbent or any other person or persons, and require the production of and examine any books or papers necessary for that purpose, and shall thereupon cause compensation to be made out of the monies granted by this Act to the incumbent of any such parish during his incumbency for any loss which he may sustain by reason of the diminution thereof, in consequence of any such division into district parishes, and of such fees, oblations, and offerings being transferred thereby to the spiritual person serving the churches or chapels of district parishes under the provisions of this Act: Provided always, that no such ascertainment or compensation made thereupon, or inquiry made, or matter or thing done, or evidence given or produced in relation thereto, shall in any manner affect or prejudice any question as to any right or claim in relation to any such fees, oblations, or offerings.

Commissioners may accept buildings and sites for churches and parsonage houses.

XXXIII. And be it further enacted, that it shall be lawful for the said commissioners to accept and take any building or buildings fit to be used for or to be converted into such additional churches or chapels, and also any lands, tenements, and hereditaments proper for sites of additional churches or chapels, not exceeding in quantity in any one place what may be sufficient for building of a church or chapel, providing a churchyard, and making a proper and sufficient access or approach thereto, from any persons willing to give the same; and every such site, when conveyed to the said commissioners, and the church erected thereupon, and notice thereof given to the bishop of the diocese, shall become for ever thereafter devoted to ecclesiastical purposes only, in order that the same may be consecrated by the bishop to public worship according to the rights (*sic*) of the *united* Church of England *and Ireland* as by law established; and it shall also be lawful for the said commissioners to accept and take, from any person willing to give the same, any house, garden, and appurtenances, not exceeding ten acres in the whole, for the residence of the spiritual person serving such church or chapel, or any land, not exceeding the said ten acres in quantity, for erecting such house and appurtenances and making such garden; and the same shall (immediately upon or after the consecration of such church or chapel) become and be the house and glebe belonging to such church or chapel, and vest in the incumbent for the time being as such.

Commissioners of woods, with consent of Treasury, and duchies of Lancaster and

XXXIV. And be it further enacted, that it shall be lawful for the commissioners of His Majesty's woods, forests, and land revenues, by and with the consent of the lord high treasurer of the United Kingdom of Great Britain and Ireland, or the commissioners of His Ma-

58 Geo. III. c. 45.

jesty's treasury of the United Kingdom of Great Britain and Ireland, or any three or more of them, in writing, or for His Majesty by any grant signed by the chancellor of the duchy of Lancaster for the time being, or for the Duke of Cornwall by any grant signed by the chancellor of the duchy of Cornwall for the time being, or for any body politic, corporate, or collegiate, or corporation aggregate or sole, to grant any such building or buildings, or any site or sites for the building of any such churches or chapels with or without cemeteries thereto, and any house or appurtenances and garden for the residence of the spiritual person who may serve the church or chapel.

Cornwall, &c. may grant buildings and sites for churches and parsonage houses.

Parishes and extra-parochial places shall furnish sites, when required by commissioners.

XXXV. And be it further enacted, that all such parishes and extra-parochial places as shall be required by the commissioners shall furnish sites for such additional churches or chapels as the commissioners may deem necessary to be built under the provisions of this Act; and that as soon as the commissioners shall have fixed upon any parish or extra-parochial place as being one in which it is necessary that a church or chapel should be built under the provisions of this Act, they shall give notice to the churchwardens thereof, by causing such notice to be left at their respective places of abode, of their intention to build or cause to be built such church or chapel, and of the extent of ground which will be required for the site thereof and making a proper access and approach thereto, and of the part of the parish or extra-parochial place within which the same are required to be provided; and the said churchwardens shall within the space of fourteen days call a meeting of the vestry or select vestry of the parish or extra-parochial place, or the persons possessing under any Act or Acts of

Parliament the powers of vestry of the parish or extra-parochial place, for the purpose of taking all such measures as may be necessary for providing such site and approach thereto as aforesaid; and in case such parish or extra-parochial place shall not be able to provide the same without purchase, then the vestry or select vestry, or the persons possessing as aforesaid the powers of vestry, shall and are hereby required forthwith to proceed to treat for a site and approach thereto according to such notice, but shall not conclude any bargain for the same without the approbation of the commissioners. 58 Geo. III. c. 45.

XXXVI. And be it further enacted, that it shall be lawful for all bodies politic, corporate, or collegiate, corporations aggregate or sole, tenants for life or in tail, husbands, guardians, trustees, and feoffees in trust, committees, executors, and administrators, and all other persons and trustees whomsoever, not only for or on behalf of themselves, their heirs and successors, but also for and on behalf of cestuique trusts, whether infants, issue unborn, lunatics, idiots, femes covert, or other person or persons, and to and for all femes covert who are or shall be seised, possessed of, or interested in their own right, and for every other person or persons whomsoever who shall be seised, possessed of, or interested in any lands, grounds, and hereditaments which shall be set out and ascertained for any such site, to contract for, sell, and convey, or, if copyhold, to enfranchise the same and every part thereof, unto the said commissioners under the provisions of this Act; and all such contracts, agreements, sales, conveyances, and assurances shall be valid and effectual in the law to all intents and purposes whatsoever, any law, statute, usage, or custom to the contrary thereof

Bodies politic and limited owners, &c. may sell and convey sites.

58 Geo. III. c. 45.

in anywise notwithstanding; and all bodies politic, corporate, or collegiate, and all persons whomsoever, so conveying as aforesaid, are hereby indemnified for or in respect of any such sale which he, she, or they, or any of them, shall respectively make by virtue or in pursuance of this Act.

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Conveyance by lords of manors of lands taken from commons to be sufficient.

XXXVIII. And be it further enacted, that in all cases where there shall be occasion to take part of any common or waste grounds for the purposes of this Act, the conveyance thereof by the lord and lady of the manor wherein the same shall be situate shall be a good and sufficient conveyance for the purpose of vesting the fee simple and inheritance thereof under this Act, as fully and effectually as if every person having right of common upon such commons or waste grounds had joined in and executed such conveyance; and that the compensation to be paid for any right of common upon any such commons or waste grounds as aforesaid shall be paid to the churchwardens of the respective parishes wherein such commons or waste grounds shall lie, and shall be by such churchwardens received and applied for such general or public purposes within such parishes respectively as a vestry of every such parish, to be convened by such churchwardens for that purpose, shall direct, except as is in this Act otherwise provided.

Application of compensation for rights of common.

This section is explained by 19 & 20 Vict. c. 104, s. 28, by which it was made compulsory for the churchwardens to accept payment of the said compensation.

Bodies politic and limited owners, &c. may accept satisfaction for the lands conveyed, &c.

XXXIX. Provided always, and be it further enacted, that all and every body and bodies politic, corporate, or collegiate, trustees, or other persons hereinbefore capacitated to sell and convey any lands, tenements, and other hereditaments, or enfranchise any copyholds, or any

owner or owners and the occupier or occupiers of any lands, tenements, or other hereditaments required to be taken for the purposes of this Act, may accept and receive satisfaction for the value of such lands, tenements, and hereditaments, or of any such interests as aforesaid; and from and immediately after the time of making and executing such sale and conveyance, or any contract or contracts for the same, the said commissioners, or any person or persons purchasing the same under the provisions and for the purposes of this Act, may and shall be at liberty to enter upon, and from thenceforth for ever to have, take, and use the said lands, tenements, and other hereditaments for the purposes of this Act; and in case the parties interested in such lands, tenements, or hereditaments cannot or do not agree as to the amount or value of such satisfaction, the same shall be ascertained and settled by the verdict of a jury as is hereinafter directed. 58 Geo. III. c. 45.

XL. if any body politic, corporate, or collegiate, or any other person or persons so interested for and on his, her, or their part or parts, or for or on the part of his, her, or their cestuique trusts, or of any other incapacitated person or persons as aforesaid, shall refuse to accept such purchase money or other compensation as shall be offered by them the said commissioners, or their agent by or on their behalf, and shall give notice thereof in writing to the secretary for the time being to the said commissioners within seven days next after such offer shall have been made, and the party or parties giving such notice as aforesaid shall therein request that the matter or matters in dispute may be submitted to the determination of a jury; or if any body politic, corporate, or collegiate, or any other person or persons seised, or possessed of, or interested in any such lands, In case of dispute as to amount of satisfaction, or of refusal to treat, or neglect to show title, a jury shall be impannelled to assess the sum to be paid.

58 Geo. III. c. 45. tenements, or hereditaments as aforesaid, shall refuse to treat or agree, or shall not agree, or by reason of absence or disability cannot agree with the said commissioners, or with any person or persons authorised by them, for the sale and conveyance of their respective estates and interest therein, or cannot be found or known, or shall not produce and evince a clear title to the premises they may be in possession of, or to the interest they shall claim therein, to the satisfaction of the said commissioners, or of the person or persons authorised by them; then and in every such case the said commissioners shall and they are hereby empowered and required from time to time to issue a warrant under their common seal to the sheriff of the county in which such lands, tenements, or hereditaments shall lie, or the matter in question or dispute shall arise, or in case such sheriff or his under sheriff shall happen to be one of the said commissioners, or shall enjoy any office of trust or profit under them, or shall be otherwise interested in the matter or matters in question, then to the senior coroner of the said county, and in case he shall be so interested, then to the next coroner of such county in point of seniority who shall not be so interested as aforesaid, commanding such sheriff or coroner or other person (and the sheriff or coroner or such other person is hereby empowered and required) to impannel, summon, and return not less than twenty-four nor more than forty-eight substantial and indifferent persons qualified to serve on special juries; and the persons so to be impannelled, summoned, and returned as aforesaid are hereby required to come and appear before the justices of the peace for the county wherein the premises shall lie, at some court of general or quarter sessions of the peace to

be holden in and for the same county, or at some adjournment thereof, as in such warrant shall be directed and appointed, and to attend such court of general or quarter sessions from day to day, until discharged by the said court; and out of such persons so to be impannelled, summoned, and returned a jury of twelve men shall be drawn by the clerk of the peace for the county wherein such jury shall be returned, or his deputy, in such manner as juries for trials of issues joined in His Majesty's courts at Westminster are by law directed to be drawn; and in case a sufficient number of jurymen shall not appear at the time and place appointed as aforesaid, the said clerk of the peace as before mentioned or his deputy shall return other substantial, honest, and indifferent men of the by-standers or of others who can be speedily procured to attend that service, to make up the said jury to the number of twelve; and all parties concerned may have their lawful challenges against any of the said jurymen, but shall not challenge the array; and the said clerk of the peace or his deputy is hereby empowered and required to summon and call before the said justices any witnesses touching the matters in question, and may order and authorise the said jury or any three or more of them to view the place or places or matters or things in controversy; and such jury shall upon their oaths (which oaths, as well as the oaths to such witnesses, the said justices are hereby empowered and required to administer) inquire of, assess, and ascertain, and give a verdict for the sum or sums of money which shall be paid for the purchase of such lands, tenements, or hereditaments, or compensation for any interest therein as aforesaid; and the said justices shall give

58 Geo. III. c. 45.

58 Geo. III. c. 45. judgment for such purchase money or compensation so assessed by such jury; which said verdict, and the judgment thereupon, shall be binding and conclusive to all intents and purposes upon all bodies politic, corporate, or collegiate, and upon all persons whomsoever; provided that fourteen days notice in writing at the least of the hour and place at which such jury are so required to be returned be given to the bodies politic, corporate, or collegiate, or to the person or persons interested, or claiming so to be, before the time of the meeting of the said justices and jury as aforesaid, by leaving such notice at the dwelling house of such person or persons, or of the head officer of such body or bodies politic, corporate, or collegiate, or with some tenant or occupier of the premises respectively intended to be valued; and in each and every case where a verdict shall be given for more money as a recompense or satisfaction for the absolute sale of any lands, tenements, or hereditaments, or as a compensation for any interest therein as aforesaid, than shall have been previously offered by or on behalf of the said commissioners before the summoning such jury, and where no compensation shall have been previously offered in respect thereof by or on behalf of the said commissioners, or where, by reason of absence or other impediment or disability, there shall not be found any person or persons at hand who may be legally capacitated to contract with and make conveyances to or receive compensation from the said commissioners as hereinbefore mentioned, then and in all such cases all the reasonable expenses of causing such value or compensation to be assessed and awarded as aforesaid shall be settled by the said justices, and be defrayed by the said commissioners; but if any verdict shall be given for the same

sum that shall have been previously offered by or on behalf of the said commissioners, or for a less sum than shall have been so previously offered, or in case of such refusal to treat with or make conveyances to the said commissioners by any bodies politic, corporate, or collegiate, or by any person or persons whomsoever who is or are by the provisions of this Act or otherwise legally empowered to treat and convey or receive such compensation as aforesaid, then and in all such cases (except where by reason of absence or otherwise any person shall have been prevented from treating and agreeing as aforesaid, in which case all such costs and expenses shall be borne and paid by the said commissioners) the reasonable costs and expenses of causing such value or compensation to be assessed and awarded as aforesaid shall be settled in like manner by the said justices, and be borne and paid by the body or bodies politic, corporate, or collegiate, or by the person or persons with whom the said commissioners shall have such controversies or disputes; which said costs and expenses shall and may be deducted out of the money so assessed and awarded; and the payment or tender of the remainder of such sum or sums of money shall be deemed and taken to all intents and purposes to be payment or tender of the whole sum or sums so assessed or awarded as aforesaid.

Penalty on sheriff neglecting to summon jury, and on defaulting jurors and witnesses not attending or refusing to give evidence.

XLI. And be it further enacted, that if the sheriff or other person so directed to summon and return a jury as aforesaid, or his deputy or agent, shall make default in the premises, he shall for every such offence forfeit and pay any sum not exceeding twenty pounds; and if any person so summoned and returned as aforesaid upon such jury shall not appear, or appearing shall refuse to be sworn or to give his verdict, or shall in

58 Geo. III. c. 45.

any other manner wilfully neglect his duty, contrary to the true intent and meaning of this Act, or if any person so summoned to give evidence shall not appear, or appearing shall refuse to be examined or give evidence, every person so offending (having no reasonable excuse, to be allowed by the said justices) shall for every such offence forfeit and pay any sum not exceeding ten pounds; which several and respective penalties shall and may be levied, by virtue of any warrant under the hand and seal of any one of the said justices, by distress and sale of the goods and chattels of the person so offending, rendering to him the overplus, after such penalty and the charges of such distress and sale shall be deducted; and every such penalty so recovered from any person who shall have been so summoned on such jury, or to give evidence as aforesaid, shall go and be paid to the party who shall appear to the said justice to be injured by the default of such person.

Verdicts of juries, &c. to be recorded.

XLII. And be it further enacted, that all the said judgments and verdicts (being first signed by the clerk of the peace or his deputy present at the taking of such verdicts and pronouncing of such judgments respectively) shall be kept by the respective clerks of the peace amongst the records of the quarter sessions of the county, as the case shall require, and shall be deemed to be records of the said quarter sessions to all intents and purposes whatsoever; and the same, or true copies thereof, shall be allowed to be good evidence, and all persons shall have liberty to inspect the same, paying for such inspection the sum of one shilling, and to take copies thereof, paying for every copy the sum of sixpence for every one hundred words, and so in proportion for any less number of words.

On payment or tender of sum agreed upon or assessed, commissioners may enter upon and take possession of lands.

XLIII. And be it further enacted, that upon payment or legal tender of such sum or sums of money as shall have been contracted or agreed for between the parties, or determined and adjusted by any jury or juries in manner aforesaid, for the purchase of any such lands, tenements, or hereditaments, to the proprietor or proprietors of such lands and other hereditaments and premises, or such other person or persons as shall be interested therein or entitled to receive such money or compensation respectively, at any time after the same shall have been so agreed for, determined, or awarded, if the person or persons so entitled or interested, or any of them, cannot be found, or shall refuse to receive the same, or shall not be able to make a good title to the premises to the satisfaction of the said commissioners, or shall refuse to execute a conveyance or conveyances of the premises which shall be required for the purposes of this Act, then, upon payment of the said sum or sums of money into the Bank of England, as hereafter directed and required (in case the same shall be requisite), for the use of such person or persons so interested or entitled as aforesaid, it shall be lawful for the said commissioners, and their agents, servants, and workmen, or any other persons authorised by them in their behalf, immediately to enter upon such lands, grounds, and other hereditaments respectively; and the fee simple and inheritance thereof, together with the yearly profits thereof, and all the estate, use, trust, and interest of any person or persons therein, shall from thenceforth be vested in such person or persons in such manner as directed in and by this Act, or as may be declared in any sentence of consecration under the provisions of this Act, to and for the purposes of this Act for ever; and such tender, payment, or investiture

58 Geo. III. c. 45.

shall not only bar all right, title, claim, interest, and demand of the person or persons to whom the same shall or ought to have been made, but also shall extend to and shall be deemed and construed to bar the dower of the wife, and of every such person, and all estates tail and other estates in reversion and remainder of his, her, or their issue, and of every other person, and all incumbrancers whomsoever therein: Provided nevertheless, that before such payment it shall not be lawful for the said commissioners, or any person acting under their authority, to dig into such lands or grounds for the purpose of making any foundation, or building any church or chapel, without leave of the respective owners or occupiers thereof in writing under their respective hands.

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Sections 44 to 49 relate to the application of the compensation.

Mortgagees to convey on payment or tender of debt and interest.

L. And be it further enacted, that all and every person and persons who shall have any mortgage or mortgages on any lands, tenements, and hereditaments to be taken or used for the purposes of this Act, not being in possession thereof by virtue of such mortgage or mortgages, shall, on the tender of the principal money and interest due thereon, together with the amount of three calendar months interest on the said principal money, by the said commissioners, or by such person or persons as they shall appoint, immediately convey, assign, and transfer such mortgage or mortgages to the said commissioners, or to such person or persons as they shall appoint; or in case such mortgagee or mortgagees shall have notice in writing from the said commissioners, or from such person or persons as they shall appoint, that they will pay off and dis-

charge the principal money and interest which shall be due on the said mortgage or mortgages at the end or expiration of two calendar months (to be computed from the day of giving such notice), that then, at the end of the said two calendar months, on payment of the principal and interest so due, such mortgagee or mortgagees shall convey, assign, and transfer his, her, or their interest in the premises to the said commissioners, or to such person or persons as shall be appointed in trust for them; and in case such mortgagee or mortgagees shall refuse to convey and assign as aforesaid on such tender or payment, that then all interest on every such mortgage shall from thenceforth cease and determine: Provided always, that in case the sum due upon any such mortgage or mortgages, with all interest due thereon, shall amount to more than the real value of the premises, to be ascertained as directed by this Act, then the said commissioners shall not be liable to pay the mortgagee or mortgagees more than the real value of such premises so ascertained as aforesaid: Provided also, that in case any such mortgagee shall neglect or refuse to convey or assign as aforesaid, then, upon payment of the principal money and interest due on any mortgage as aforesaid into the Bank of England at the end of two calendar months from the day of giving such notice as aforesaid for the use of the mortgagee or mortgagees, the cashier or cashiers of the Bank shall give a receipt or receipts for the said money in like manner as is hereinbefore directed in cases of other payments into the Bank; and thereupon all the estate, right, title, interest, use, trust, property, claim, and demand of the said mortgagee or mortgagees, and of all and every person and persons in trust for him, her, or them, shall vest in

58 Geo. III. c. 45.

58 Geo. III. c. 45.

the said commissioners, and they shall be deemed to be in the actual possession of the premises comprised in such mortgage or mortgages for the purposes of this Act, to all intents and purposes whatsoever: Provided also, that if such mortgage or mortgages comprise any other lands, tenements, or hereditaments than those which shall be so purchased or taken by the said commissioners, such mortgagee or mortgagees shall, upon payment or tender of the sum so ascertained as the value of the said lands, tenements, or hereditaments as aforesaid, forthwith convey, assign, and transfer his, her, or their interest in such lands, tenements, or hereditaments to the said commissioners hereby incorporated, or to such person or persons as shall be appointed in trust for them; and in default of their doing so, and on payment of such money into the Bank of England for the use of the mortgagee or mortgagees, the cashier or cashiers of the Bank shall give such receipt or receipts as above mentioned; and thereupon all the estate, right, title, interest, use, trust, property, claim, and demand of the said mortgagee or mortgagees, and of all and every person and persons in trust for them, in the said lands, tenements, or hereditaments, the value whereof shall have been so ascertained and paid into the Bank as aforesaid, shall vest in the said commissioners, and they shall be deemed to be in the actual possession of the said premises to all intents and purposes whatsoever; and such sums of money shall be deducted from the amount of the principal and interest due to such mortgagee or mortgagees by virtue of such mortgage or mortgages.

Provision where part only of mortgaged lands is taken.

Commissioners may resell lands not wanted.

LI. that it shall be lawful for the said commissioners, by indenture under the hands and seals of any five or more of them, to grant and convey, by way of

absolute sale, for a consideration in money, such lands, tenements, or hereditaments, or any such part or parts thereof, as shall not be wanted for the purposes of this Act; and all such conveyances from the said commissioners shall be valid and effectual, anything in this Act contained, or any other law, statute, or custom to the contrary thereof in anywise notwithstanding; and upon payment of the money which shall arise by sale or sales of such lands, tenements, and hereditaments, it shall and may be lawful for the secretary for the time being to the said commissioners to sign and give receipts for the money for which the same shall be sold, which receipts shall be sufficient discharges to any person or persons for the purchase money for which such lands or buildings shall be so sold, or for so much thereof as in such receipts shall be acknowledged or expressed to be received, and such person or persons shall not afterwards be answerable or accountable for any loss, misapplication, or nonapplication of such purchase money or any part thereof: Provided always, that the said commissioners, before they shall sell and dispose of such lands, tenements, or hereditaments, shall first offer to resell the same to the person or persons from whom they shall have purchased the same, or would have been then entitled thereto in case the same had not been purchased by the said commissioners, the price at which the same shall be resold being adjusted and settled by a jury, in like manner as the price for any land to be taken in pursuance of this Act is hereinbefore directed to be settled in case of difference or dispute as to the value thereof; and if such person or persons shall not agree, or shall refuse to repurchase the same, it shall and may be lawful to and for any person or persons not interested in the premises to make an affidavit, to be

58 Geo. III. c. 45.

Original vendors to have right of pre-emption.

58 Geo. III. c. 45.

sworn before a master extraordinary of the High Court of Chancery or before one of His Majesty's justices of the peace for the county where such lands shall be situate, stating that such offer was made by or on behalf of the said commissioners, and that such person or persons did not agree or refuse to purchase such lands or buildings, as the case may be; and such affidavit shall in all courts be sufficient evidence and proof that such offer was made, and not agreed to, or refused.

Where a parish desires to procure a site for a church, but the owner is under disability, commissioners may procure the same under this Act.

LII. And be it further enacted, that in every case in which any parish or extra-parochial place is or shall be empowered by any Act or Acts of Parliament to build any church or chapel, or enlarge any existing church or chapel, and also in every case in which any parish or extra-parochial place shall be desirous of building any church or chapel, or enlarging any existing church or chapel, and defraying the expense thereof without any aid from the commissioners in that behalf, and are not able to procure a fit and proper site for such new church or chapel, or for the enlarging such existing church or chapel, by reason of the inability of any person or persons, body or bodies interested in such site or any part thereof to convey or make a good title to the same, freed and discharged from all incumbrances, or shall be unwilling to treat for the sale thereof, or cannot agree for such sale and purchase, then and in every such case it shall be lawful for the said commissioners, and they are hereby authorised and empowered, if, upon application made for that purpose, and upon a statement of all the circumstances of the case, they shall think it proper and expedient, to proceed under the provisions of this Act to procure such site; and the expense of procuring such site shall be chargeable and charged upon the parish or extra-parochial place making such applica-

tion, in like manner as in cases of money advanced for sites under this Act; and all the powers, authorities, provisions, and regulations and clauses in this Act contained in relation to procuring sites for churches to be built under the provisions thereof, shall extend and apply to the procuring and taking of such sites, as fully in any respect as if such churches or chapels were built under the provisions of this Act. 58 Geo. III. c. 45.

Certain premises not to be taken without leave of the owners, &c.

LIII. Provided always, and be it further enacted, that nothing in this Act contained shall empower the said commissioners to take any private dwelling house or offices, or garden, orchard, yard, park, pleasure ground, paddock, or planted walk, or avenue appurtenant thereto, without the consent of the owners and occupiers thereof.

Commissioners may advance money to parishes to purchase sites.

LIV. And be it further enacted, that it shall be lawful for the said commissioners to advance money to any parish or extra-parochial place to purchase any site or sites, in case from the amount of the sum or the state of the parish or extra-parochial place as to its population, parochial rates, and other circumstances, it may appear to the commissioners to be proper to make such advance; and the commissioners shall in every such case assign periods for repayment of all monies so advanced by instalments within ten years.

If parish does not procure a site, commissioners may, and charge the expense upon the parish.

LV. And be it further enacted, that if no site shall be provided in any parish or extra-parochial place and duly notified to the said commissioners, within six months after notice shall have been given by the said commissioners that a site would be required in such parish or extra-parochial place, it shall be lawful for the said commissioners and they are hereby empowered to purchase a site, and charge the expense of such purchase upon the rates raised or to be raised

58 Geo. III. c. 45.

under the provisions of this Act in such parish or extra-parochial place, giving notice of the amount, and of the periods within which the repayment by instalments will be required.

Sums expended in purchasing sites or advanced to parishes by commissioners, to be charged upon and paid out of the church rates.

LVI. And be it further enacted, that the church rates of the parish shall in all cases be and be deemed in law to be the security for the repayment of all money expended by the parish in providing any site or sites, or advanced by the commissioners to any parish under the provisions of this Act, or paid by the commissioners in cases of neglect in providing sites; and all such sums of money so expended or advanced under the provisions of this Act, in carrying into execution the purposes thereof in any parish, shall be and are hereby made chargeable and charged upon such rates, and the churchwardens shall in every such case make, and they are hereby required and empowered to make, proper and sufficient rates for repaying such expenses and advances within the periods or at the times which shall be specified by the commissioners under the authority of this Act in that behalf.

Rates may be raised in extra-parochial places for the purposes of this Act.

LVII. And be it further enacted, that in every case in which any sum or sums of money shall have been expended in purchasing any site or sites for any church or churches, or chapel or chapels, or advanced by the commissioners under the provisions of this Act for any extra-parochial place in which no church rates shall be made, raised, or collected, it shall be lawful for the said commissioners to require any justice or justices acting in or for the division of the county in which such extra-parochial place shall be, and every such justice or justices shall from time to time, as the case may require, appoint two or more proper persons to make, raise,

collect, and levy rates for making all such payments and repayments as may be required under the provisions of this Act; and all such persons so appointed shall have all such and the like powers and authorities for making, raising, levying, and collecting and enforcing payment of any such rates as any churchwardens have by law in that behalf, and are hereby required and empowered to make, raise, levy, and collect sufficient rates for making such payments and repayments as aforesaid; and all sums so expended or advanced shall be charged upon such rates and paid thereout at such times and in like manner and under the like provisions, as if such place had been and was a parish in which church rates were made, levied, and collected by law, and all such rates shall be deemed in law church rates for the purposes of this Act, and made, raised, levied, collected, and accounted for as such; and all Acts of Parliament, and clauses, provisions, regulations, penalties, and forfeitures contained in any Act or Acts of Parliament, and all powers, authorities, and laws, ecclesiastical or others, for the making, raising, levying, collecting, and accounting for church rates, shall apply and be enforced for the making, raising, levying, and collecting such rates in any such extra-parochial place, from time to time, when and so often as it shall be or become necessary to make or raise any such rates for the purposes of this Act. 58 Geo. III. c. 45.

Power of churchwardens, &c. to borrow money on the security of the rates.

LVIII. And be it further enacted, that it shall be lawful for the churchwardens of any parish, or persons appointed in any extra-parochial place, with the consent in any parish of the vestry or select vestry, or persons possessing, under any Act or Acts of Parliament, the powers of vestry, and with the consent in any extra-parochial place of the majority of the persons, who

58 Geo. III. c. 45.

would be entitled to vote in vestry if the same had been a parish, assembled at any meeting called for that purpose, with notice given in the church or chapel of the extra-parochial place, or in the church or chapel nearest adjoining thereto, to borrow any money upon the credit of the rates of the parish or extra-parochial place so to be made as aforesaid, and they are hereby empowered and required, in any case in which such money shall have been borrowed, to raise by rate a sum sufficient from time to time to pay the interest of the money so borrowed, and one twentieth part of the principal sum borrowed out of the produce of such rates, until the whole of the money so borrowed shall be repaid.

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Appointment of churchwardens.

LXXIII. And be it further enacted, that two fit and proper persons shall be appointed to act as churchwardens for every church or chapel built or appropriated under the provisions of this Act, at the usual period of appointing parish officers in every year, and shall be chosen, one by the incumbent of the church or chapel for the time being, and the other by the inhabitant householders entitled to vote in the election of churchwardens residing in the district to which the church or chapel shall belong, and of any extra-parochial place by such inhabitant householders as would be entitled to vote in the election of churchwardens if such extra-parochial place had been a parish; and the two persons, when so elected churchwardens, shall appear and be admitted and sworn according to law, and shall collect and receive the rents of the seats and pews, and pay the stipends or salaries appointed by the commissioners to be paid to the minister and clerk of and belonging to the church or chapel for the time being, and also shall do

perform, and execute all lawful acts, matters, and things necessary and requisite for and concerning the repairs, management, good order, and decency of behaviour to be kept and observed in the church or chapel by the congregation thereof; and the persons so to be appointed or chosen churchwardens shall continue in their said office until others shall be chosen in like manner in their stead; and all the persons so chosen churchwardens are hereby authorised and empowered, in case of nonpayment of the rents of the seats and pews of the church or chapel for which they shall be appointed, to enter upon and sell the same, or else to sue for and recover the same by action or actions for such rents, in the names of "The Churchwardens of the Church or Chapel of" [describing the same], as the case shall or may require, without specifying the christian or surnames of such churchwardens; and no such action shall abate by reason of the death or removal or going out of office of any such churchwarden.

Recovery by churchwardens of rents of pews, &c.

This section and s. 26 of 59 Geo. III. c. 134, constitute not merely the relation of trustees and cestui que trust between the churchwardens and the minister, but also they impose on the churchwardens the legal and absolute duty of paying over the pew rents applicable to the minister's stipend as soon as they are received, and that the minister has therefore a right of action at law on the statute, or for money received against the churchwardens in the event of their not performing that duty (*Lloyd* v. *Burrup*, [1869] L. R. 4 Ex. 63; 38 L. J. Ex. 25; 19 L. T. N. S. 696).

LXXIV. And be it further enacted, that the churchwardens of every parish, in which any additional chapel shall be built or provided under any of the provisions of this Act without making any division thereof into separate parishes or district parishes, shall be and are hereby authorised and required to execute and do all

Where parish is not divided, the churchwardens thereof shall act under this Act.

58 Geo. III. c. 45.

such things as the churchwardens to be appointed under the provisions of this Act are authorised and required to do.

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No opening to be made in any church or chapel for the purposes of burial; nor any grave made in any churchyard at a less distance than 20 feet from the walls of the church.

LXXX. And be it further enacted, that it shall not be lawful to break up the pavement or to open the soil beneath the same within any church or chapel to be erected under the provisions of this Act for the purposes of burial, or to make any grave in any cemetery or churchyard thereunto adjacent or belonging, at any less distance than twenty feet from the external walls of such church or chapel respectively: Provided always, that nothing herein contained shall extend or be construed to extend to prevent the burial of dead bodies in any vault wholly arched with brick or stone, which may have been constructed for such purposes under any church or chapel, and to which the only access shall be by steps on the outside of the external walls thereof; and if any burial shall take place or any grave be made otherwise than is herein provided, the person or persons ordering or causing the same to be made shall for every such offence, on conviction thereof before any two of His Majesty's justices of the peace for the county or place, forfeit and pay the sum of fifty pounds; and in default of payment thereof the same shall and may be levied and recovered by warrant under the hand and seal of such justices, by distress and sale of the goods and chattels of such offender or offenders, rendering the overplus (if any) to the owner thereof; of which penalty one moiety shall be given to the informer, and the other moiety to the use of the poor of the parish.

Proviso as to burials in vaults.

The vicar and churchwardens of a parish church, in the diocese of London, built under this Act and closed for burials by an order in council under the Burial Act, 1853, concurred

in an application by the widow of a parishioner whose dead body had been cremated, praying the Consistory Court of London to authorise by faculty the formation of a niche in the wall of the church inside the church and above the level of the floor, and the permanently placing therein of a sealed urn containing the cremated ashes of such dead body. It was held by Dr. *Tristram*, that the burial of the cremated ashes of a dead body in the church had not been prohibited by this Act, the Public Health Acts, or the order in council under the Burial Acts, the provisions of those Acts as to "burial" not applying to the burial of the remains of a corpse after it had been reduced to ashes, and that the Court had jurisdiction in its discretion to grant the faculty as prayed, but must decline to do so having regard to the inconvenience which might ensue in case of alterations in the church, &c., if the urn was deposited in the church wall according to the proposal of the applicant. It was held also, that the Court, having ascertained from the Home Office that no objection on sanitary grounds was entertained by the Home Secretary to the interment of the urn containing the remains below the floor of the church, was prepared, at the request of the applicant, to decree the issue of a faculty for the urn and its contents being so interred below the church, subject to a proper fee for the interment being paid to the incumbent of the parish. *Semble*, that the cremated remains cannot lawfully be interred in or under a parish church except under the authority of a faculty from the ordinary (*In re Kerr*, [1894] P. 284). 58 Geo. III. c. 45.

Accounts of commissioners to be annually laid before Parliament.

LXXXI. And be it further enacted, that accounts shall annually be laid before both Houses of Parliament of the progress made by the said commissioners in execution of the purposes of this Act, stating the number of churches or chapels built or building, the stipends assigned to the incumbents or curates thereof, the money expended, and for what purposes, and all such other particulars as shall be necessary for explaining the progress made in carrying the purposes of this Act into execution.

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58 Geo. III. c. 45.

Saving as to ecclesiastical laws and powers of bishop, &c.

LXXXIV. Provided always, and be it further enacted and declared, that neither this Act, nor anything herein contained, shall extend to invalidate or avoid any ecclesiastical law or constitution of the Church of England, or to destroy any of the rights or powers belonging to any bishop of any diocese, or any archdeacon, chancellor, or official.

Bishop, &c. may exercise ecclesiastical jurisdiction in parishes under this Act.

LXXXV. And be it further enacted and declared, that he and they respectively may at all times hereafter visit, institute, and exercise ecclesiastical jurisdiction in all the parishes to be erected or divided by virtue or in pursuance of this Act, or in any part or place within the same, as amply as they or any of them may do now therein, and in such manner as in any other parishes or places within his or their diocese or jurisdiction respectively.

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59 Geo. III. c. 134.

59 GEO. III. c. 134.

An Act to amend and render more effectual an Act passed in the last Session of Parliament, for building and promoting the building of additional Churches in populous Parishes. [13th July, 1819.]

The provisions of this Act as to the enforcement of the payment of a rate are repealed by the Statute Law Revision Act, 1873. By the Short Titles Act, 1896, this Act may be cited as the Church Building Act, 1819.

WHEREAS an Act passed in the last Session of Parliament, intituled "An Act for building and promoting the building of additional Churches in populous

58 Geo. III. c. 45.

Parishes": And whereas it is expedient and necessary that some of the provisions of the said Act should be amended, and other provisions thereof enlarged, and that further and additional provision should be made for rendering the said Act more effectual: Be it therefore enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same. 59 Geo. III. c. 134.

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His Majesty may appoint commissioners to supply vacancies.

III. *And be it further enacted, that it shall be lawful for His Majesty, his heirs and successors, when and so often as any vacancies shall or may arise, by death, resignation, or otherwise, of any of the commissioners appointed by His Majesty under the provisions of the said recited Act or this Act, from time to time to supply any such vacancy or vacancies by the appointment of any other person or persons, and also from time to time to appoint additional commissioners, who, together with the persons before appointed, shall be the commissioners for carrying into execution the purposes of the said Act and this Act.*

Repealed, Statute Law Revision Act, 1873.

Commissioners empowered to allow the whole of the expenses in certain cases.

IV. And be it further enacted, that it shall be lawful for the said commissioners, and they are hereby empowered to allow and make grants for the defraying the whole of the charges and expenses of building any churches or chapels under the provisions of the said recited Act or this Act, in all cases in which the commissioners shall see fit, either on account of the inability of the inhabitants to bear any part of the charge of building any such churches or chapels, or from any other cause which shall, in the judgment and discretion of the said commissioners, be sufficient,

59 Geo. III. c. 134.

any thing in the said recited Act contained to the contrary notwithstanding.

Commissioners may treat with and make grants to divisions of parishes as if they were distinct parishes.

V. It shall be lawful for the said commissioners, and they are hereby empowered to make grants or loans, or grants and loans, to any such townships, hamlets, vills, chapelries, or other divisions of parishes, as may, in the judgment of the commissioners, from their population require further accommodation for divine service according to the rites of the United Church of England and Ireland, although the population of any such division may not amount to four thousand, and although in the whole parish there may be accommodation for more than one fourth part of the inhabitants; and the commissioners may in every such case proceed in relation to any such divisions under the provisions of the said Act and this Act, in every respect as if they were separate and distinct parishes; and all the provisions in the said Act and this Act contained for enabling the said commissioners to make grants or loans to any parishes or extra-parochial places shall extend and apply and be in full force as to such divisions of parishes, as fully and effectually to all intents and purposes as if such divisions were separate and distinct parishes, and as if all the powers, authorities, and provisions in the said Act and this Act contained in relation to parishes were severally and separately re-enacted as to such divisions of parishes.

Commissioners may unite parts of contiguous parishes into ecclesiastical districts for the purposes of the Acts;

VI. And whereas a considerable population is frequently collected together at the extremities of and locally situate in parishes or extra-parochial places contiguous to each other, at a distance from the respective churches or chapels of such respective parishes or extra-parochial places: Be it therefore enacted, that it shall be lawful for the said commissioners, with such consent

as is required by the said recited Act in the case of district parishes, to unite and consolidate any such contiguous parts of such parishes and extra-parochial places into a separate and distinct district for all ecclesiastical purposes, and to cause such district to be named, ascertained, and marked out by described bounds, and such name, and the description of such bounds, when approved by His Majesty in council, to be enrolled in the office of the registry of the diocese to which such district shall belong under the provisions of this Act, and to make grants or loans for or towards the building of or to build any chapel or chapels, with or without cemeteries, in and for the use of the inhabitants of any such district, in such manner and under such regulations as may, in the judgment of the commissioners, appear from the circumstances to be most expedient, and to constitute any such district a consolidated chapelry; and every such chapelry shall be under the superintendence of such spiritual person as shall be appointed under the provisions of this Act to serve any such chapel; and such spiritual person shall have cure of souls in such district; and the right of presentation and appointment of such spiritual person shall thenceforth belong to such person or persons, and be exercised in such manner as may be agreed by the several patrons of the churches or chapels of such parishes and extra-parochial places respectively, with the approbation of the commissioners; and banns of marriage may be published, and marriages, christenings, churchings, and burials may be solemnised and performed in any such chapel immediately and at all times after the consecration thereof; and the pew rents in such chapel shall be fixed, and salaries to the minister and clerk assigned therefrom, in such manner as is

59 Geo. III. c. 134. and build chapels for the use of such districts.

59 Geo. III. c. 134.

directed in the said recited Act or in this Act concerning pew rents and salaries in separate or district parishes; and all fees and offerings which may arise and accrue within such chapelry according to such table of fees as the commissioners shall make with the approbation of the bishop, may be demanded, received, sued for, prosecuted, and recovered by the spiritual person having cure of souls therein, and by the clerk and sexton of such chapelries, in like manner as if every such chapelry was a distinct parish; and it shall be lawful for the said commissioners, and they are hereby required in every such case to ascertain and make compensation, in manner directed in like cases under the said recited Act, for any loss which may be sustained by the incumbent of any contiguous parish or extra-parochial place which shall form part of any such district by reason of any fees, oblations, and offerings being transferred to the spiritual person serving any such chapel:

This section is amended by 8 & 9 Vict. c. 70, s. 9, *infra*, p. 603 (see *R.* v. *Overseers of South Weald*, [1864] 5 B. & S. 391; 10 L. T. N. S. 498; 33 L. J. M. C. 193; 12 W. R. 873).

A district formed under this section and called a consolidated chapelry is governed by the same regulations as a district formed under 58 Geo. III. c. 45, and called a district parish (*Jones* v. *Gough*, [1865] 2 Moore P. C. C. N. S. 1; 12 L. T. N. S. 31; 13 W. R. 509).

By the Church Building Act, 1832 (2 & 3 Will. IV. c. 61), chapels of chapelries consolidated under this section are, if within exempt or peculiar jurisdictions, to be subject to the bishop and archdeacon within whose diocese and archdeaconry the altar is locally situate.

Commissioners may build without previous determination.

VII. And be it further enacted, that in every case in which the commissioners shall determine that any additional church or chapel or churches or chapels shall be erected in any parish or extra-

parochial place, it shall be lawful for the said commissioners to require sites to be provided for the same, in manner directed by the said recited Act, and to grant or lend money for the purchasing of sites, and for the erecting, or to erect or build, under the provisions of the said Act or this Act, any building or buildings for the celebration of divine service according to the rites of the United Church of England and Ireland, without determining before the making of any such requisition of sites, or of any such grant or loan, or before the erecting or building any such church or chapel, whether the parish or extra-parochial place in which the same shall be built shall be divided into separate and distinct parishes or districts for ecclesiastical purposes under the provisions of the said Act, or whether any such building shall, after the consecration thereof, be deemed a church or chapel, or whether the same shall be appropriated to the accommodation of the parish at large in which the same is built, or to any particular district or division or divisions thereof; any thing in the said recited Act to the contrary notwithstanding.

Provision as to division of the parish, or whether such buildings shall be deemed churches or chapels when built

VIII. And be it further enacted, that in every case in which the said commissioners shall be of opinion that it will be expedient to divide any parish or extra-parochial place into two or more distinct and separate parishes for ecclesiastical purposes under the provisions of the said recited Act, it shall be lawful for the said commissioners, with such consents as are by the said Act required in such cases, to apportion the relative and respective proportions of glebe land, tithes, moduses, or other endowments or emoluments, which it may be expedient to assign and attach to each of such respective divisions, without

In divided parishes, glebe, &c. may be apportioned without regard to local situation.

59 Geo. III. c. 134.

regard to whether any such respective proportions of glebe land, tithes, moduses, or other endowments or emoluments are locally situate or arise or accrue within the division or district to which they may be so assigned, or are locally situate or arise or accrue within the parish or extra-parochial place so proposed to be divided, or elsewhere; any thing in the said recited Act to the contrary notwithstanding.

Commissioners in dividing parishes to apportion permanent charges as well as glebe, &c.

IX. And be it further enacted, that it shall be lawful for the commissioners, with consent of the bishop, in the division of any parish, and of the relative proportion of glebe land, tithes, moduses, or other endowments, under the provisions of the said recited Act or this Act, to apportion also the permanent charges in respect thereof, or in any manner affecting the same or the incumbent for the time being of the said parish; and such charges so apportioned shall thereafter be borne by and belong to each of the divisions of such parish or by the spiritual person serving the same respectively; any thing in the said recited Act to the contrary notwithstanding.

Clerks and sextons of divisions of parish may recover their fees, &c.

X. And be it further enacted, that when any parish shall be divided under the provisions of the said recited Act or this Act, all fees, dues, profits, and emoluments belonging to the parish clerk or sexton respectively of any such parish, whether by prescription, usage, or otherwise, which shall thereafter arise in any district or division of any parish divided under the provisions of the said recited Act shall belong to and be recoverable by the clerks and sextons respectively of each of the divisions respectively of the parish to which they shall be assigned, in like manner in every respect and after the same rate as they were before recoverable by the clerk and sexton

respectively of the original parish; and it shall be lawful for the said commissioners in every such case to ascertain and make compensation, in manner directed by the said recited Act in cases of compensation by reason of loss of fees, for any loss of fees, dues, profits, and emoluments which any clerk or sexton may sustain by reason of any such division. 59 Geo. III. c. 134.

Where the clerk and sexton of a parish brought an action for money had and received against the clerk and sexton of the chapel for fees received by him for christenings, burials, and marriages in the chapel, it was held that the action for money had and received would lie for these fees, but that the chapelry was not within the operation of this section, and the clerk and sexton of the parish was entitled to the fees arising at the chapel (*Roberts v. Aulton*, [1857] 2 H. & N. 432; 26 L. J. Ex. 380).

Commissioners may fix table of fees.

XI. And be it further enacted, that it shall be lawful for the said commissioners, and they are hereby empowered to make and fix any table of fees for any parish, with the consent of the vestry or select vestry, or persons exercising the powers of vestry in such parish, and also to make and fix any such table of fees for any extra-parochial place, or in or for any district chapelry or parochial chapelry, in which any church or chapel shall be built or appropriated under the provisions of the said recited Act or this Act, with the consent nevertheless, in all such cases, of the bishop of the diocese; and all fees so fixed may be demanded, received, sued for, prosecuted, and recovered by the spiritual person or clerk or sexton to whom the same shall be assigned, in like manner and by such and the same means as any ancient legal fees of a like nature may be sued for, prosecuted, and recovered.

New churches to become

XII. And be it further enacted, that all churches which shall be built or acquired under the provi-

59 Geo. III. c. 134.

distinct benefices; but to be served, during existing incumbency, by stipendiary curates, and be deemed one church.

sions of the said Act or this Act, whether belonging to parishes completely divided or to district parishes, shall immediately after the consecration thereof become and be deemed to be and be distinct benefices and churches for all ecclesiastical purposes: Provided always, that during the incumbency of the then existing incumbent of the parish, except as hereinafter excepted, such churches shall be served by licensed stipendiary curates, appointed by the existing incumbent, and subject to all the laws in force relating to stipendiary curates, except as to the assigning salaries to such curates by the bishop of the diocese; and every such existing incumbent shall, until his death or other avoidance, continue to hold all the churches of the several divisions of his parish as if they were one church, unless he shall voluntarily resign one or more of them; any statute or law against plurality of benefices, or any thing contained in the said recited Act or any other Act or Acts of Parliament, to the contrary notwithstanding.

Right of patronage of parishes divided to belong to the patron of the original church, and be exercised after existing incumbency.

XIII. Provided always, and be it further enacted, that the right of presentation and appointment of the spiritual persons to be the respective incumbents of or to serve the churches of the several parishes created by the complete division of any parish under the provisions of the said recited Act or this Act, shall in every case belong to the patron of the church of the original parish; and the exercise of such right of presentation or appointment shall commence on the death or other avoidance of the existing incumbent, except in any case in which the division of any parish shall have been made, or in which the commissioners shall have declared their intention of dividing any parish, before or during any avoidance, in which

cases the exercise of such right of presentation or appointment shall commence upon the consecration of the church or churches respectively of any such division; and the several churches erected in and for such divisions respectively shall immediately upon consecration become benefices, and subject to all the laws in force concerning presentations and appointments to benefices and churches and lapse, and all other laws, provisions, and regulations relating to the holding of benefices and churches, any thing in the said recited Act or in this Act to the contrary notwithstanding: Provided always, that the spiritual care and superintendence of every parish so divided during avoidance shall, until incumbents shall have been presented or appointed for the divisions thereof, continue in the spiritual person who shall be the incumbent of the original parish; and such spiritual person shall receive all emoluments accruing and arising within the parish during such superintendence.

Churchwardens, with consent of vestry and the bishop of the diocese, may raise money upon the credit of the rates for the repair of churches or chapels, and provide for the repayment thereof.

XIV. And be it further enacted, that it shall and may be lawful for the churchwardens of any parish, with the consent of the vestry or persons possessing the powers of vestry, and with the consent of the bishop and incumbent, and they are hereby authorised and empowered to borrow and raise upon the credit of the church rates, or of any rates made under the said recited Act or this Act, of any such parish, such sum or sums of money as shall be necessary for defraying the expense of repairing any churches or chapels; and they are hereby empowered and required, in any case in which such money shall have been borrowed, to raise by rate a sum sufficient from time to time to pay the interest of the money so borrowed, and not less than ten per cent. of the principal sum

59 Geo. III. c. 134.

borrowed, out of the produce of such rates, until the whole of the money so borrowed shall be repaid.

Bodies politic, &c. empowered to give up rights of patronage, and endow chapels.

XV. And be it further enacted, that it shall be lawful for all bodies politic, corporate, or collegiate, corporations aggregate or sole, tenants for life or in tail, husbands, guardians, trustees, and feoffees in trust, committees, executors, and administrators, and all other persons and trustees whomsoever, not only for or on behalf of themselves, their heirs and successors, but also for and on behalf of cestuique trusts, whether infants, issue unborn, lunatics, idiots, femes covert, or other person or persons, and to and for all femes covert who are or shall be possessed of or entitled to or interested in their own right, and for every other persons whomsoever who shall be possessed of or entitled to or interested in any right of patronage, or of presentation or appointment to any benefice, donative, perpetual curacy, or of any spiritual person to any church or chapel or the performance of any ecclesiastical duties in any church or chapel, to surrender any such right of patronage, presentation, or appointment, or enter into or make any agreement relating thereto with the said commissioners, or the bishop of the diocese, for the purpose of regulating the same according to the provisions of this Act; and it shall also be lawful for any such bodies or persons as aforesaid to endow or agree to the endowment of any chapel heretofore built out of the pew rents thereof; any thing contained in any Act or Acts of Parliament, or in any deed or deeds, or any trusts relating thereto respectively, to the contrary notwithstanding.

Commissioners may assign districts to

XVI. And be it further enacted, that it shall be lawful for the commissioners, in the same manner and with the like consents as are required in case

of division into ecclesiastical districts under the said recited Act or this Act, to assign a particular district to any chapel of ease or parochial chapel already existing, or to any chapel built or which may hereafter be built or acquired under the powers of the said Act or this Act; and such district shall be under the immediate care of the curate appointed to serve such chapel, but subject nevertheless to the superintendence and control of the incumbent of the parish church; and all such curates shall be nominated by the incumbent of the parish to the bishop for his license, except where the right of nomination shall already be legally vested in any other person or persons, and in every such case by the person or persons possessing such right of nomination; subject to all the laws in force relating to stipendiary curates, except as to the assigning of salaries to such curates: provided always, that it shall be lawful for the commissioners, with the consent of the bishop of the diocese, to determine whether any and what part or proportion of the fees or dues for marriages, baptisms, churchings, and burials shall be assigned to any such curate, and whether banns of marriage shall be published, and marriages or baptisms, churchings, or burials shall be solemnised or performed in any such chapel, or not; and in any case in which marriages shall be allowed in any such chapel, the commissioners shall cause the boundaries of the district assigned to such chapel to be enrolled in the office of the registry of the diocese, any thing in the said recited Act to the contrary notwithstanding; and no such chapelry shall become a benefice by reason of any augmentation of the maintenance of the curate, by any grant or bounty under the provision of any Act or Acts of Parliament, or law or laws for augmenting small

chapels under the care of curates, subject to the control of incumbents.

Commissioners, with consent of bishop, may determine what fees for marriages, &c. shall be assigned

59 Geo. III. c. 134. livings; any thing in such Act or Acts of Parliament, or law or laws, to the contrary notwithstanding.

This section is in part repealed by 2 & 3 Vict. c. 49, s. 1.

In 1851 the church of St. T. was built and consecrated, and in 1852 a district was assigned to it by order in council (as a chapel of ease) under 58 Geo. III. c. 45, and 59 Geo. III. c. 134, s. 16, out of the ancient parish of W. At that time the deceased inhabitants were all buried in the parish churchyard. By the Act of Consecration and order in council authority was given to perform baptisms, marriages, and burials in the new church, and the fees were to be received by the incumbent of the district. In 1854 the plaintiff was appointed incumbent of St. T.; and a burial ground was then provided for the whole parish, including St. T.'s district, which contributed to the rates out of which the ground was provided; and in 1856 the ground and a chapel on it were consecrated, and a burial board appointed, the old churchyard being closed. At that time G. was rector of the parish of W. In 1864 G. resigned, and B. was appointed rector. The plaintiff then claimed the right to perform the burial service over such of the parishioners of St. T. as were buried in the burial ground, and to have the fees. It was held that the district of St. T. became a distinct and new parish in 1856 under s. 14 of Lord Blandford's Act (19 & 20 Vict. c. 104), and was a new parish within s. 5 of 20 & 21 Vict. c. 81; and that the plaintiff, as incumbent of the district, was entitled to the right he claimed, under the above sections of the two Acts, on the resignation of the incumbent of the old parish (*Cronshaw* v. *Wigan Burial Board*, [1873] L. R. 8 Q. B. 217).

An ancient chapelry situate within a large parish had from time immemorial had a separate church and churchyard, and separate churchwardens and church rates, and in which the incumbent had performed marriages, christenings, churchings, and burials, and retained the fees for his own use. The right of presentation to the chapelry (which was a perpetual curacy) was in the rector of the parish. The chapelry was described as a parish in the ecclesiastical survey, but in recent local Acts of Parliament the church of the chapelry was referred to as a church or ancient chapel of ease: it was held that the chapelry was not a distinct parish, and that under the powers

conferred by this section the commissioners were authorised to divide the chapelry into districts, and to assign a particular district to the ancient chapel (*Tuckniss* v. *Alexander*, [1863] 2 D. & S. 614; 32 L. J. Ch. 794; 8 L. T. N. S. 821; 11 W. R. 938). 59 Geo. III. c. 134.

Under this Act and by an order in council, a district, with a district church, was parted off from the parish of St. Matthew, Bethnal Green; but the order in council directed that during the incumbency of the rector of St. Matthew two-thirds of the fees to be received for marriages, baptisms, churchings, and burials at the district church should belong and be paid to the rector, and one-third to the district minister. It was held that where the minister had actually received the entire fees for marriages, &c., the rector might recover from him the two-thirds in an action for money had and received; but that the Act and order in council did not oblige the minister to receive the fees, or any part of them, and that the rector could not maintain *assumpsit* against him on a supposed duty to take the fees and pay the rector his two-thirds (*King* v. *Alston*, [1848] 12 Q. B. 971; 18 L. J. Q. B. 59).

All Acts of Parliament, &c. relating to publishing banns of marriage, marriages, &c. to apply to churches and chapels of districts.

XVII. And be it further enacted, that all Acts of Parliament, laws, and customs relating to publishing banns of marriage, marriages, christenings, churchings, and burials, and the registering thereof, and to all ecclesiastical fees, oblations, or offerings, shall apply to all districts and consolidated or district chapelries, and divisions of any parishes or extra-parochial places, whereof the boundaries shall be enrolled in the High Court of Chancery under the provisions of the said recited Act and this Act, and in the churches and chapels whereof banns of marriage shall be allowed to be published, and marriages, christenings, churchings, and burials, or any of them shall be allowed to be solemnised, and to the churches and chapels thereof, and to the ecclesiastical persons having cure of souls therein or serving the same, in like manner in every respect as if the same respectively had been

59 Geo. III. c. 134.

ancient, separate, and distinct parishes and parish churches by law to all intents and purposes.

All apportionment of glebe and emoluments, and of charges, shall be registered in the registry of the diocese, and not enrolled in Chancery.

XVIII. And be it further enacted, that every apportionment of glebe land, tithes, moduses, and other endowments and emoluments, and of any fees, oblations, offerings, or other ecclesiastical dues or profits, and also of all permanent and other charges made under the provisions of the said recited Act or this Act, and also the description of boundaries assigned to chapels under this Act, in which no marriages shall be allowed to be solemnised, and all tables of fees made under the provisions of this Act, shall be registered in the registry of the diocese to which the parish, in relation to which any such apportionment shall be made, shall be or be locally situate, and not enrolled in the Court of Chancery; any thing in the said recited Act to the contrary notwithstanding.

No chapels built under provisions of recited Act to be deemed perpetual curacies, &c.

XIX. And be it further enacted, that no chapel built or acquired under the provisions of the said recited Act, which shall be situate in any district parish made a parish for ecclesiastical purposes under the provisions of the said recited Act, and which shall not be or be made the church of such district, shall be or be deemed to be a perpetual curacy, or considered in law as a benefice presentative under the provisions of the said recited Act, any thing therein contained to the contrary notwithstanding.

Commissioners of woods and forests, &c. with consent of Treasury, may grant materials for building churches and chapels.

XX. And be it further enacted, that it shall be lawful for the commissioners of His Majesty's woods, forests, and land revenues, by and with the consent of the lord high treasurer of the United Kingdom of Great Britain and Ireland, or the commissioners of His Majesty's treasury of the United Kingdom of Great Britain and Ireland, or any three or more of them, in writing, or for

His Majesty, by any grant signed by the chancellor of the Duchy of Lancaster for the time being, or for the Duke of Cornwall, by any grant signed by the chancellor of the Duchy of Cornwall for the time being, or for any body politic, corporate, or collegiate, or corporation aggregate or sole, to give and grant any stone, slate, or timber, or other materials respectively, from any quarries, forests, or wastes belonging to His Majesty or the Duke of Cornwall, or any such body respectively, for or towards the building of any churches or chapels under the provisions of the said recited Act or this Act, and any house or appurtenances and garden for the residence of the spiritual person who may serve the church or chapel; any thing in any statute or Act of Parliament or law or charter to the contrary notwithstanding. 59 Geo. III. c. 134.

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XXII. And be it further enacted, that it shall be lawful for the commissioners, and they are hereby authorised and empowered, in any case or cases in which they shall deem it expedient, from the amount or description of the population of any parish, township, hamlet, vill, chapelry, or other division of any parish, and the amount of the rates paid therein, or any other good and sufficient cause, to grant money for or towards the purchase of sites, or to treat by themselves or their agents for the purchase of sites for the building of churches or chapels, with or without cemeteries, and without requiring or demanding repayment or security for the repayment of the money so granted or expended in the purchase of such sites or cemeteries from the parishes or divisions of parishes for which such sites shall be so provided; and it shall also be lawful for the said commissioners to purchase or

Commissioners may grant money for providing sites, without requiring repayment or security, as required under recited Act.

59 Geo. III. c. 134.

grant money for the purchasing of cemeteries not within the bounds of the parish for which the same shall be provided, or for enlarging cemeteries or providing additional cemeteries within such parish respectively; all which cemeteries, if not within the bounds of such parish, shall, after consecration, be deemed part of the parish for the use of which they shall have been purchased or provided; any thing in the said recited Act, or in any Act or Acts of Parliament, or law or laws, to the contrary notwithstanding.

See, for amendment of this section, 8 & 9 Vict. c. 70, s. 14, *infra*, p. 607.

Churchwardens empowered to levy rates.

XXIII. And be it further enacted, that it shall be lawful for any churchwarden or chapelwarden of any parish or division of any parish, or of any consolidated or district chapelry, in which any rates shall be made under the provisions of the said recited Act or this Act, to demand, receive, sue for, levy, and recover all such rates, by all such ways and means as any church rates may be demanded, sued for, levied, and recovered, as fully and effectually as if all powers, authorities, provisions, penalties, and forfeitures relating to the demanding, suing for, levying, and recovering of any church rates, or for any refusal to pay any like rates, were specially enacted for that purpose in the said recited Act and this Act: provided always, that any churchwardens or chapelwardens appointed under the provisions of the said recited Act or this Act shall not in virtue of such office be deemed overseers of the poor.

See note as to levying rates, *ante*, p. 518.

No application to build or enlarge any

XXIV. No application and offer to build or enlarge any church or chapel, either wholly or in part, shall be made, nor shall any church or chapel be built or

rebuilt or enlarged, or any purchase made of any new or additional burial ground, by means of any rates upon any parish, in any case in which one third part or more in value, such value to be ascertained by an average of the rate for the relief of the poor for the preceding three years, of the proprietors of messuages, lands, and tenements within such parish, whether for estates of freehold or copyhold, or by virtue of leases for terms of years absolute, whereof not less than fifteen years shall be unexpired, or determinable upon a life or lives, shall dissent therefrom; such dissent to be entered in the book containing the proceedings of the vestry, and to be signified, in case of any future vestry, within two months after any resolution for the purposes aforesaid of such vestry or select vestry as aforesaid; and in case of corporations aggregate, under the hand of the president, head, or chief member thereof for the time being, and in case of femes covert, minors, insane persons, and persons absent from the kingdom, under the hands of their respective husbands, guardians, committees, trustees, attornies, or agents, who are hereby respectively authorised to sign such dissents, and in cases of trustees of charitable institutions, under the hands of the major part of the trustees, or of any such body of any such trustees as may under their respective trusts be authorised to act in the execution of the trusts.

church, &c. shall be made if one-third of the proprietors of messuages, &c. shall dissent thereto.

Manner of signifying such dissents.

XXV. Provided always, and be it further enacted, that it shall be lawful for the inhabitants of any parish who shall be assembled and present at any vestry, or the major part of the inhabitants so assembled and present at any such vestry, of which notice shall have been given upon two successive Sundays preceding the meeting of such vestry, or for two third parts of

Rate not exceeding 1s. in the pound in any one year, or 5s. in the whole, may be raised for building or enlarging a

59 Geo. III c. 134.

church or chapel, without such proportion of consents of proprietors, &c. as is required by recited Act.

such of the persons exercising the powers of vestry in such parish as shall be assembled at any meeting, of which due notice shall have been given according to the mode of giving notices for the assembling of such persons, to order and direct the making and raising of any rate, not exceeding the amount of one shilling in the pound in any one year, or the amount of five shillings in the pound in the whole, upon the annual value of the property in the parish, for the purpose of building or enlarging any church or churches, or chapel or chapels, either wholly or in part, by means of rates, without any further or other or any greater number of consents of any inhabitants or proprietors or occupiers or other persons, any thing in the said recited Act to the contrary notwithstanding: provided always, that no greater or larger rate than aforesaid shall be ordered or directed to be made or raised in relation to any application or offer to build or to enlarge any church or chapel, either wholly or in part, by means of rates, if any such proportion of dissents as are in this Act specified are signified in writing in manner directed by this Act; and every such order and direction so made as aforesaid under the provisions of this Act shall be imperative upon the churchwardens or chapelwardens of the parish in which such order shall be made, who shall forthwith make and raise and levy and collect the rate so ordered, for the purpose of the said recited Act and this Act, any thing in the said recited Act or any other Act or Acts of Parliament to the contrary notwithstanding; and every such rate shall be made, raised, levied, collected, received, and accounted for in like manner, and with all such powers, authorities, provisoes, and regulations, and under and subject to such penalties and forfeitures, as are in law applicable to the making,

raising, levying, and collecting any church rate in any parish. 59 Geo. III. c. 134.

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XXIX. And be it further enacted, that the clerk in every church and chapel erected, built, or acquired or appropriated under the provisions of the said recited Act or this Act shall be annually appointed by the minister of the church or chapel. Appointment of clerk.

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XXXIV. And be it further enacted, that if any lands, tenements, or hereditaments which shall have been acquired by the commissioners under the said recited Act and this Act, whether by gift or otherwise, shall happen to remain unconsecrated at the end of the term of ten years therein mentioned, or at any other determination of any commission granted by His Majesty under the said recited Act or this Act, such unconsecrated lands, tenements, and hereditaments shall be immediately vested in His Majesty, his heirs and successors, to be applied to the uses, intents, and purposes for which they were acquired, under the direction of His Majesty in council; unless or until any other provision respecting the same shall be made by authority of Parliament. For disposal of unconsecrated lands, &c. acquired by the commissioners.

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XXXVI. And be it further enacted, that all such parishes and extra-parochial places as shall be required by the commissioners for executing the said recited Act and this Act shall furnish lands for enlarging such existing churchyards or burial grounds, or for making such additional churchyards or burial grounds, as the commissioners may deem necessary to be enlarged or set out under the provisions of this Act; and that as soon as the commissioners shall have fixed upon any parish or extra-parochial place as being Parishes and extra-parochial places to furnish lands when required by commissioners for burial grounds.

59 Geo. III. c. 134.

one in which it is necessary that the churchyard or burial ground should be enlarged, or that a new burial ground should be made under the provisions of this Act, they shall give notice to the churchwardens thereof, by causing such notice to be left at their respective places of abode, of their intention to enlarge such churchyard or burial ground, or to set out a new burial ground, and of the extent of ground which will be required for any such purpose, and for making a proper access and approach thereto, and of the part of the parish or extra-parochial place within which the same is required to be provided; and the said churchwardens shall, within the space of fourteen days, call a meeting of the vestry of the parish or extra-parochial place, or the persons possessing under any Act or Acts of Parliament the powers of vestry of the parish or extra-parochial place, for the purpose of taking all such measures as may be necessary for providing such additional churchyard or burial ground and approach thereto as aforesaid; and in case such parish or extra-parochial place shall not be able to provide the same without purchase, then the vestry or the persons possessing as aforesaid the powers of vestry, shall and are hereby required forthwith to proceed to treat for a piece of ground and approach thereto, according to such notice, but shall not conclude any bargain for the same without the approbation of the commissioners.

Powers of recited Act as to purchasing lands for building churches extended to lands for additional churchyards.

XXXVII. And be it further enacted, that all the powers and provisions of the said recited Act or of this Act, which authorise or relate to the grant, sale, conveyance, purchase, and re-sale of any lands, tenements, or hereditaments, from or in the name of or on behalf of His Majesty, or from any bodies politic, corporate, or collegiate, corporations aggregate or sole, tenants for

life or in tail, husbands, guardians, trustees, and feoffees in trust, committees, executors, and administrators, cestuique trusts, infants, lunatics, idiots, femes covert, or any other person or persons whomsoever, to or by the said commissioners, for the purpose of building any additional churches or chapels, or the issuing, advancing, levying, or raising, or borrowing or taking up at interest, of any money for any such purpose, shall be and are hereby declared to be extended to and be applicable in all respects, *mutatis mutandis*, for the grant, sale, conveyance, purchase, or re-sale of any lands, tenements, or hereditaments which may be necessary for enlarging any churchyard or burial ground, or for making any new burial ground and approaches thereto, under the provisions of this Act, and for the issuing, advancing, levying, and raising, or borrowing and taking up at interest of any money which may be required for any of those purposes, and for repaying the same by instalments or otherwise, in like manner as if all such powers and provisions had been fully repeated and re-enacted in this Act.

Additional burial grounds to be consecrated.

XXXVIII. And be it further enacted, that any piece or parcel of land or ground which shall, under the provisions of this Act, be added to any existing churchyard or burial ground, or be appropriated and set apart as and for a new burial ground, shall be, as soon as conveniently may be, consecrated for the burial of the dead, according to the usage of the united Church of England and Ireland, and shall forever thereafter be used as and for an additional burial ground ; and the freehold of the land which shall be so consecrated, shall from and after the consecration thereof vest in the person or persons in whom the freehold of the ancient churchyard or burial ground of any such parish or chapelry where

59 Geo. III. c. 134. the same may be situated, shall from time to time be vested.

Commissioners may alter fences of churchyards, and turn footpaths, &c.

XXXIX. And be it further enacted, that it shall be lawful for the said commissioners, if they should think fit, to alter, repair, pull down, and rebuild, or order or direct to be altered, repaired, pulled down, and rebuilt, the walls or fences of any existing churchyard or burial ground of any parish or chapelry, and to fence off with walls or otherwise, any additional or new burial ground, to be set out or provided by virtue of this Act; and also to stop up and discontinue, or alter or vary, or order to be stopped up and discontinued, or altered or varied, any entrance or gate leading into any churchyard or burial ground, and the paths, footways, and passages into, through, or over the same, as to them may appear useless and unnecessary, or as they shall think fit to alter or vary; provided that the same be done with the consent of any two justices of the peace of the county, city, town, or place, where any such entrance, gate, path, or passage shall be stopped up or altered; and on notice being given in the manner and form prescribed by an Act passed in the fifty-fifth year of the reign of his present Majesty, intituled "An Act to amend an Act of the thirteenth year of his present Majesty, for the Amendment and Preservation of the Public Highways, in so far as the same relates to Notice of Appeal against turning or diverting a Public Highway; and to extend the Provisions of the same Act to the stopping up of unnecessary Roads."

55 Geo. III c. 68.

The notice of stopping up useless ways must be given before making an order by the commissioners, and an order made and consented to by two justices before notice, and confirmed at the sessions, is bad (*R.* v. *Arkwright*, [1848] 12 Q. B. 960; 18 L. J. Q. B. 26).

59 Geo. III. c. 134.

Rates may be laid on any parish for rebuilding or enlarging the church.

XL. And be it further enacted, that when any parish shall be desirous of extending and increasing the accommodation in the parish church, and it shall be found necessary or expedient to that end to take down the existing church and to rebuild the same on the same site, or on a more convenient site, it shall and may be lawful for the churchwardens of any such parish, with the consent of the vestry, or persons possessing the powers of vestry, and with the consent also of the ordinary, patron, incumbent, and lay impropriator, if any such there be, to take down such existing church, and to rebuild the same upon the same or upon a new site; and the said churchwardens are hereby authorised and empowered to borrow and raise, upon the credit of the church rates, or any rates made under the said recited Act or this Act, of any such parish, such sum or sums of money as shall be necessary for defraying the expense or any part of the expense of taking down and rebuilding such church, and to make rates for the payment of the interest of such sum or sums of money so to be borrowed and raised, and for providing a fund, of not less than the amount of the interest of the sum advanced, for the repayment of the principal thereof, or for repaying such principal in such manner, and at such times, and in such proportions as shall be agreed upon with the persons advancing any such money: provided always, that no church shall be so taken down and rebuilt, by means of any rates upon any parish, if such proportion of dissents as are in this Act specified in relation to any application to build or to enlarge any church or chapel, either wholly or in part, by means of rates, are signified in writing in manner directed by this Act; and such church, when consecrated, shall be to all intents and purposes the parish church of such

59 Geo. III. c. 134.

parish, for the celebration of divine offices, and the solemnisation of marriages, according to the rites and ceremonies of the Church of England: provided always, that one-half of the additional accommodation, which shall be obtained by the rebuilding such church, shall be set apart for free and open sittings: and provided also, that all persons enjoying any pews or sittings within such church, so to be taken down in virtue of any faculty or prescription, shall have a pew or pews, sitting or sittings, as near as may be in the same situation, and of like dimensions, allotted and set apart for them in such new church; and that all tombstones, monuments, and monumental inscriptions, in such church so to be taken down, shall be carefully preserved by the churchwardens, and when the said church shall be rebuilt, on the same or a more convenient site, the said tombstones, monuments, and monumental inscriptions shall be set up by the said churchwardens, at the charge of the parish, in such new church, as near as circumstances will admit, in the situations from whence they were removed in the said church so to be taken down.

Commissioners may discharge the parliamentary fees of obtaining certain Acts.

XLI. And whereas particular and special circumstances may in certain cases render it necessary, for the more effectual carrying into execution the beneficial purposes of this Act, in certain parishes, divisions of parishes, or extra-parochial places, that particular Acts of Parliament should be passed for such parishes, divisions, and places; be it therefore enacted, that it shall be lawful for the said commissioners, in any such case in which they shall deem it proper, to pay or advance money for the payment of any fees which may become due and be payable in either House of Parliament in respect of the passing of any such Act or Acts

of Parliament; and that such fees may be paid out of any money in the hands of the commissioners, arising out of any Exchequer Bills under the provisions of this Act; and that such Acts shall in all other respects be considered as public Acts.

59 Geo. III. c. 134.

Such Acts to be deemed public Acts.

3 GEO. IV. c. 72.

3 Geo. IV. c. 72.

An Act to amend and render more effectual two Acts passed in the Fifty-eighth and Fifty-ninth Years of his late Majesty for building and promoting the building of additional Churches in populous Parishes.

[22nd July, 1822.]

. . . . It shall be lawful for the master general and principal officers of His Majesty's ordnance, and also for the comptroller of the barrack department, and also for the principal officers of any other public department, having or holding any messuages or buildings, or any lands, grounds, tenements, or hereditaments for and on behalf of His Majesty for the public use of any such department, by any grant or conveyance signed by the master general or any two of the principal officers of the ordnance department or by any grant or conveyance signed by the comptroller of the barrack department or by any grant or conveyance signed by any one or more of the principal officers of any such other public department as aforesaid, and countersigned, as to all such last-mentioned grants or conveyances, by the Treasury , and it shall also be lawful for any and every body politic, corporate, and collegiate, and corporation aggregate or

Ordnance and other public departments, and all corporations, &c. may give messuages, lands, &c. for sites for churches, &c.

3 Geo. IV. c. 72. sole, or for any trustees, guardians, commissioners, or other persons having the control, care, or management of any hospital, schools, charitable foundations, or other public institutions, by any grant or conveyance signed by or under the seal of such body or corporation respectively, to give, grant, and convey any messuages, buildings, lands, grounds, tenements, or hereditaments respectively, and if any such messuages, buildings, lands, grounds, tenements, or hereditaments respectively shall be copyhold at the time of any such gift, grant, or conveyance, in any case in which the lord is willing to enfranchise the same, to be used as sites for churches or chapels, or for enlarging sites of churches or chapels, or for church or chapel yards or cemeteries, or for enlarging sites for church or chapel yards or cemeteries, or for parsonages or residences for ecclesiastical persons; and all such gifts, grants, and conveyances shall be made to the commissioners or such other person or persons as shall be specified by the said commissioners under the said recited Acts and this Act, to be used for the purposes thereof; and all such gifts and grants may be made and given without any valuable consideration whatever; and all conveyances and assurances made for carrying any such gifts or grants into effect shall be valid and effectual in the law to all intents and purposes whatsoever, any law, statute, usage, or custom to the contrary thereof in anywise notwithstanding; and all bodies politic, corporate, or collegiate, and all persons whosoever so giving, granting, and conveying as aforesaid are hereby indemnified for or in respect of any such gift, grant, conveyance, or enfranchisement which he, she, or they, or any of them shall respectively make or convey by virtue of or in pursuance and for the purposes of the said recited Acts and this Act.

By the Short Titles Act, 1896, this Act may be cited as the Church Building Act, 1822. 3 Geo. IV. c. 72.

The provisions of this Act as to enforcement of the payment of a rate are repealed by the Statute Law Revision Act, 1873.

The trustee of a charity is not authorised under this section, or by the Church Building Acts, to convey to the commissioners the private chapel of a charitable foundation held by him as a trustee for the benefit of the charity. Such a conveyance was declared to be a breach of trust, and a reconveyance ordered, although the commissioners had caused the chapel to be consecrated as a parish church, and had caused the parson who was chaplain of the charity to be appointed the incumbent, as of a parish church, and caused a district to be assigned to it as a parish church under an order in council. The acts of public functionaries who exceed the bounds of their authority by assuming a power over property which the law does not give them, whether they be a corporation or individuals, are treated as the acts of private persons dealing with property without proper authority (*Attorney-General* v. *Bishop of Manchester*, [1867] L. R. 3 Eq. 436).

Form of conveyance.

II. And be it further enacted, that all grants, conveyances, and assurances, which shall be made under the authority of the said recited Acts or this Act, or either of them, of any messuages, buildings, lands, grounds, tenements, or hereditaments, whether belonging to His Majesty as part of the duchy of Cornwall or of the duchy of Lancaster, or otherwise, or to any body or persons whatever, to the said commissioners or any other person or persons under their direction for the purposes of the recited Acts and this Act, may and shall be made according to the form following, or in such other form as the case may require, or as near thereto as the circumstances of the case will admit; videlicet,

"I [*or* we, or the corporate title if a corporation], under the authority and for the purposes of an Act passed in the fifty-eighth year of the reign of his late

3 Geo. IV. c. 72. Majesty, intituled 'An Act for building and promoting the building of additional churches in populous parishes,' and of another Act passed in the fifty-ninth year of the reign of his late Majesty, intituled 'An Act to amend and render more effectual an Act passed in the last session of Parliament for building and promoting the building of additional churches in populous parishes,' and of another Act passed in the third year of the reign of his present Majesty, intituled 'An Act to amend and render more effectual two Acts passed in the fifty-eighth and fifty-ninth years of his late Majesty for building and promoting the building of additional churches in populous parishes,' do hereby freely and voluntarily give to His Majesty's commissioners [or to] (as the case may require), *and by these presents freely and voluntarily, and without any valuable consideration* [if the lands et cætera are conveyed for a valuable consideration, leave out the words in italics, and insert, do, for and in consideration of the sum of to me, or us, or the paid, hereby under the authority of the several recited Acts, grant, convey, and release to the said] all [describing the premises to be conveyed], and all [my, or our, or the] right, title, and interest of [if a corporation] to and in the same and every part thereof; to hold to the said and their successors, for the purposes of the said several Acts, and to be devoted, when consecrated, to ecclesiastical purposes for ever, by virtue and according to the true intent and meaning of the said several recited Acts. In witness whereof, et cætera."

And all such conveyances and assurances shall be valid and effectual in the law to all intents and purposes, and shall be a complete bar to all estates tail, and other

estates, rights, titles, trusts, and interests and incumbrances whatsoever. 3 Geo. IV. c. 72.

Under the Church Building Acts land in Middlesex was conveyed to the Ecclesiastical Commissioners by deed-poll executed by the grantor. The commissioners assented by affixing their seal. It was held that under 7 Anne, c. 20, s. 5, the registrar was not bound to register a memorial of the conveyance without the attestation of the party who witnessed the execution by the grantor, and that the affixing the seal of the commissioners was not an execution by them of the deed, and an attestation of the affixing such seal did not satisfy the statute (*Reg.* v. *Middlesex Registrar*, [1858] 1 E. & E. 322; 28 L. J. Q. B. 77).

Commissioners may obtain or accept lands required for enlarging or rebuilding any church, &c. whether contiguous to old site or not.

III. And be it further enacted, that it shall be lawful for the said commissioners under the said recited Acts and this Act to procure and obtain, or require parishes, chapelries, townships, and places to provide and furnish, by all or any of such ways and means as are specified in the said recited Acts or either of them or this Act, in relation to sites for additional churches or for church or chapel yards or cemeteries, or to accept and receive as gifts and grants under and for the purposes of the said recited Acts and this Act, and to take grants of to themselves, or direct grants of to be made to any other persons specified by them for that purpose, any such land or ground or additional land or ground, as may in the judgment of the said commissioners be required for the enlarging or improving any church or chapel, and also any land or ground which may be required or be convenient for the rebuilding of any church or chapel, whether contiguous or not to the present site thereof; and all the powers, authorities, clauses, and provisions in the said recited Acts or either of them or in this Act contained, in relation to the obtaining or procuring any lands or

3 Geo. IV. c. 72.

grounds, or requiring any lands or grounds to be provided or furnished by any parishes or places, for any sites for additional churches, or any other purpose of the said recited Acts, shall extend and be construed to extend to the obtaining, procuring, requiring, accepting, or receiving, under the authority of the said recited Acts or this Act or either of them, any lands or grounds for the purposes aforesaid, as fully and effectually to all intents and purposes as if all such powers and authorities had been given and all such clauses and provisions had been repeated and re-enacted in this Act, as to such lands and grounds.

Where lands are subject to fines on renewals, the value of such fines shall be paid to the corporation, &c. entitled thereto.

IV. And be it further enacted, that in every case in which any lands, tenements, hereditaments, or any interest in or arising out of any lands, tenements, or hereditaments, shall be given up, sold, or surrendered by or taken under the provisions of the said Act or this Act from any body politic or corporate or person, and which any such body politic, corporate, or person shall be entitled to take any fine or fines upon the renewal of any life or lives, or of any lease or leases upon or of any such lands, tenements, or hereditaments, the amount of the value of the interests of such body politic or corporate or person which would arise out of the renewal of such life or lives or lease or leases, if the same were renewed at the time of such lands, tenements, or hereditaments being so given up, sold, surrendered, or taken, shall be paid to the body politic, corporate, or person entitled thereto, out of the principal sum ascertained under the provisions of the said recited Acts as the value of such lands, tenements, or hereditaments; and the remainder of such principal sum shall be applied under the provisions of the said recited Acts or this Act.

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Commissioners, and places for which local Acts as to building any church, &c. have been passed, may make grants or loans for procuring land, &c.

VII. And be it further enacted, that it shall be lawful for the said commissioners, and also for any parish or place for which any Act or Acts of Parliament shall have been passed in relation to the building or rebuilding or enlarging any church or chapel, or enlarging or procuring any church or chapel yard or cemetery, to make any grants or loans, or give or grant any other aid or assistance in procuring sites for churches or chapels, or land or ground for such church or chapel yards or cemetery, or any addition thereto, and to use, enforce, and apply all the powers, authorities, claims, regulations, and provisions in the said several Acts and this Act contained for carrying into execution any of the purposes thereof, anything in any Act or Acts relating to any such parish or place to the contrary notwithstanding.

Commissioners in certain cases may take land for parishes, and pay the value assessed.

VIII. And be it further enacted, that in every case in which any parish or place shall not have been able or shall not hereafter be able to procure any land or ground for the building or rebuilding any church or chapel, or enlarging any existing church or chapel, or for the making of any yard to any church or chapel, or for any cemetery, or for enlarging any yard to any church or chapel or any cemetery, by reason of the inability of any person or persons, body or bodies, interested in such land or ground or any part thereof, to convey or make a good title to the same, freed and discharged from all incumbrances, or that any such person or persons or body or bodies shall be unwilling to treat for the sale thereof, or cannot agree for such sale and purchase, then and in every such case it shall be lawful for the said commissioners, and they are hereby authorised and empowered, if upon consideration of all the circumstances of the case they shall think proper, to take such land or ground for any such pur-

3 Geo. IV. c. 72.

pose as aforesaid for any such parish or place; and it shall be lawful for the said commissioners in every such case to use, apply, and put in force all such of the powers and authorities of the said recited Acts or this Act respectively as may be necessary for the assessing, ascertaining, and paying the value and taking and giving possession of any such land or ground; and all the powers and authorities in the said recited Acts and this Act contained, in relation to the assessing or ascertaining and to the paying the sums assessed on the value of and to the taking and giving possession of sites for churches to be built under the said recited Acts and this Act, shall extend and apply to the assessing and ascertaining, and to the paying the sums assessed as the value, and to the taking and giving possession of such land or ground, as fully and effectually to all intents and purposes as if the same were severally and separately repeated and re-enacted for the purposes aforesaid; anything in the said recited Acts or either of them or this Act to the contrary notwithstanding.

Apportionment of quit or other reserved rents.

IX. And be it further enacted, that whenever any quit, chief, or other rent or rent-charge, either for term of years, or for life or lives, or in fee, shall be reserved upon or payable out of any lands, tenements, or hereditaments, part of which may be given, sold, or taken under the provisions of the said recited Acts or this Act, for the purposes thereof respectively, and difficulties may arise as to the apportioning such rents, and exonerating the portions of any such lands, tenements, or hereditaments so given, sold, or taken for any claim in respect of such rents, and as to the effectually charging the remainder of such lands, tenements, or hereditaments with the remainder of such rent, it shall be lawful for the public or corporate body or trustees or other

persons giving or selling any such portion of any such lands, tenements, or hereditaments, or from whom the same may be taken under the provisions of the said recited Acts or this Act, to apportion any such rent, with the consent and concurrence of the said commissioners; and the lands, tenements, and hereditaments used and applied for the purposes of the said Acts or this Act shall in every such case be wholly exonerated from any such rents or any part thereof, but the remaining part of such lands, tenements, or hereditaments shall not be thereby discharged from the remaining part of the rent fixed by any such apportionment, and the rent so apportioned shall in every such case be deemed the entire rent upon the remaining part of such lands, tenements, and hereditaments; and all remedies by distress, entry, action, or otherwise, which might have been used and applied for the recovery of the original entire rent, shall be used, enforced, and applied for the recovery of the rent fixed by such apportionment. 3 Geo. IV. c. 72.

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Commissioners may, in case of division into district parishes, direct that all or any part of the fees for marriages and burials, &c. shall continue to belong to the incumbent of original church of the parish.

XII. And be it further enacted, that it shall be lawful for the said commissioners, in every case in which any parish or place shall be divided, under the provisions of the said recited Acts, into district parishes or places for ecclesiastical purposes, with distinct district churches for each of such divisions, to order and direct, with the consent of the bishop of the diocese, that all or any proportion of the fees, dues, and emoluments arising and accruing from the publication of banns and celebration of marriages, and from churchings and burials, and the making, opening, or using any catacombs, vaults, or ground for burials, in all or any the several districts and divisions of such parish or extra-parochial place, shall

3 Geo. IV. c. 72.

remain with, and continue to belong to, and to be received by or for and on account of, and to the use of, and to be accounted for, wholly or in part, as the case may require, to the incumbent of the original church or chapel, anything in the said recited Acts or either of them or in this Act contained to the contrary notwithstanding; and every such order shall be registered in the registry of the diocese, and a duplicate copy thereof deposited and kept in the respective chests of the churches and chapels respectively of such parish or place: Provided always, that it shall be lawful for the commissioners, with such consent as aforesaid, at any time within five years after the making of any such original order or direction, to annul or in any manner to alter any such order or direction, or the appropriation made thereby; and such new order or direction or alteration, when made, shall be registered in manner aforesaid.

See s. 12 of 59 Geo. III. c. 134, *ante*, p. 525.

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Commissioners may, with consent of ordinary, &c. convert district chapelries into separate or district parishes, where suitable residences, &c. can be obtained for incumbents, and fees transferred to them are compensated for.

XVI. And be it further enacted, that it shall be lawful for the said commissioners, and they are hereby empowered, with the consent of the ordinary and the patron and of the incumbent of the parish for the time being, or, in case of the refusal of any incumbent, then with the consent of the ordinary upon the next avoidance, to convert any district chapelry made under the provisions of the said recited Acts into a separate and distinct parish for ecclesiastical purposes, or into a district parish under the said Acts, in any case in which a suitable house of residence, and such maintenance as the said commissioners shall deem competent, can be procured and established for the use of the minister of such separate and distinct or district parish so to be

made, and his successors, and in which a compensation shall be provided, to the satisfaction of the commissioners and the then incumbent of the parish, for all fees, oblations, offerings, and other ecclesiastical dues which may by such conversion be transferred to the minister of such separate and distinct or district parish so to be made; and every such conversion shall be made under the seal of the said commissioners, and registered in the registry of the diocese in which the parish shall be locally situate, and enrolled in the High Court of Chancery, and duplicate thereof shall be lodged in the chest of the original parish church and in the church or chapel of the separate and distinct or district parish.

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All Acts, &c. relating to publishing banns of marriage and to marriages, &c. to apply to extra-parochial places for which churches, &c. are provided, &c.

XVIII. And be it further enacted, that all Acts of Parliament, laws, and customs relating to publishing banns of marriage, and to marriages, christenings, churchings, and burials, and the registering thereof, and to all ecclesiastical fees, oblations, or offerings, shall apply to all extra-parochial places, and to all divisions and districts of any extra-parochial places, in and for which any churches or chapels shall be built or appropriated under the provisions of the said recited Acts or this Act, and to the churches and chapels thereof, and to the ecclesiastical persons having the cure of souls therein, or serving the same, in like manner in every respect as if the same respectively had been ancient, separate, and distinct parishes and parish churches by law, to all intents and purposes.

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Chapels acquired, &c. in aid of parish churches.

XX. all chapels acquired and appropriated or built or enlarged and improved under any of the provisions of the said recited Acts, or under any local

3 Geo. IV. c. 72.

whether with or without districts assigned, shall be repaired by the parish at large, in the same manner as the parish church.

Acts, in cases in which no provision is made relating thereto in such local Acts, in aid of the churches of the parishes or places in which they shall be situated (whether any districts of any such parishes shall have been assigned or not to such chapels as belonging thereto for ecclesiastical purposes), shall be repaired by the respective parishes or places at large to which such chapels shall belong; and rates shall be raised, levied, and collected for that purpose in like manner in every respect as for the repair of the churches of such parishes and places; and all the laws in force for making, raising, levying, and collecting rates for the repair of churches shall be applied and put in force for the raising, making, levying, and collecting such rates for the repair of such chapels, as fully and effectually to all intents and purposes as if the same were severally, separately, and specially repeated and re-enacted in this Act for that purpose as to the repairs of such chapels, anything in the said recited Acts or any other Act or Acts of Parliament to the contrary notwithstanding.

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Commissioners may authorise parishes to procure and buy additional burial grounds, &c.

XXVI. And be it further enacted, that it shall be lawful for the said commissioners to authorise and empower any parish, chapelry, township, or extra-parochial place which shall be desirous of procuring a burial ground, or adding to any existing church or chapel yard or cemetery, to procure and purchase any such land or ground, as may in the opinion of the commissioners be sufficient and properly situated, for a church or chapel yard or burial ground, or as an addition to any existing church or chapel yard or cemetery (whether such land or ground shall be situated within the parish or place for the use of which the

same shall be intended), and to make, raise, levy, and collect rates for purchase thereof, or for the repayment with interest of any money borrowed for the making such purchase, at such times and in such proportions as shall be agreed upon with the person or persons advancing any such money, and approved of by the said commissioners; and the churchwardens or chapelwardens or persons authorised under the said recited Acts to make rates for any of the purposes of the said recited Acts of any such parish, chapelry, township, or extra-parochial place, may and shall in every such case use and exercise all the powers and authorities in the said recited Acts for the purpose of making and completing such purchases, and also all the powers and authorities in the said recited Acts specified as to making, raising, and levying any rates for any of the purposes of the said recited Acts; and when any such land or ground so purchased shall be situate out of the bounds of the parish or place for which the same is intended, the same shall after consecration become and be deemed part of such parish or place, anything in any Act, law, or custom to the contrary notwithstanding.

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Deeds of gift, &c. for purposes of the Acts not to be subject to stamp duties.

XXVIII. that no deed of gift or grant, security, contract, agreement, deed, or conveyance, or other instrument made for any of the purposes in the said recited Acts mentioned, or for any other of the purposes or under any of the provisions in the said recited Acts or either of them, or of this Act, or for the carrying into execution any of the powers, authorities, regulations, purposes, or provisions thereof, or therein mentioned respectively, shall be subject to any of the duties upon stamped vellum, parchment, or paper;

3 Geo. IV. c. 72.

anything in any Act or Acts of Parliament to the contrary notwithstanding.

Title of commissioners to sites not to be questioned after five years.

XXIX. And be it further enacted, that from and after the expiration of five years after the transfer or conveyance of any messuages, lands, grounds, tenements, or hereditaments to the said commissioners, or to any person or persons for the use of any parish or place, as a site for any church or chapel, or any church or chapel yard or cemetery, whether such transfer or conveyance shall have been by gift or grant or upon or in pursuance of any sale or purchase under the provisions of the said recited Acts or this Act, although no church or chapel shall have been before the expiration of the said five years erected or built and consecrated upon such site, the said messuages, lands, grounds, tenements, or hereditaments shall become and be and remain absolutely vested in such commissioners, or the person or persons to whom the same was conveyed, for the purposes of the said Acts and this Act, free from all demands or claims of any body politic or corporate or person or persons whatever, and without being thereafter subject to any question as to any right, title, or claim thereto, or in any manner affecting the same.

See 30 & 31 Vict. c. 133, s. 7, as to extension of application of this section.

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Commissioners may, under any special circumstances, to be recorded in their proceedings, apply their powers to parishes not within

XXXII. . . . it shall be lawful for the said commissioners, in any case in which they shall, under the special circumstances of any parish or place which shall not be within any of the provisions of the said recited Acts or this Act, deem it expedient, and they are hereby authorised and empowered to use, exercise, and put in execution all or any of the provisions of the said recited Acts or this Act relating to the pro-

curing or taking of any land or ground for the purpose of procuring for any such parish or place, or of aiding in the procuring for any such parish or place, any land or ground for any of the purposes of the said recited Acts or this Act, or for the purpose of carrying into execution any of the provisions of the said recited Acts or this Act with respect to the division or consolidation of any parish or district: Provided nevertheless, that the commissioners shall in every such case enter in their proceedings the nature of the special grounds and circumstances under which they shall deem it expedient so to act. 3 Geo. IV. c. 72. — the provisions of the Acts.

XXXIII. . . . it shall be lawful for the said commissioners to make any grant or grants in relation or confirm any grant or grants heretofore made for any church or chapel in relation to which any trusts have been created by any Act or Acts of Parliament, or any deed or deeds, or instrument of consecration, which may not in all respects concur with the provisions of the said recited Acts or this Act, and to declare at the time of making or confirming any such grant that any such trusts shall notwithstanding remain and continue in full force: Provided always, that the commissioners shall, in any such case, enter in their proceedings the special grounds upon which every such grant has been made and confirmed; and in every such case such trusts shall remain and continue in full force; anything in the said recited Acts or this Act, or in the said trusts and regulations, to the contrary notwithstanding. Commissioners may make grants for churches as to which trusts have been created, &c.

XXXIV. And be it further enacted, that in every case in which any grant shall have been or shall be made of any land or ground, for any of the purposes of the said recited Acts or this Act, as a gift, or without any pecuniary consideration being paid for the same, Land acquired for the purposes of the Acts, and not used, may be ex-

3 Geo. IV. c. 72.

changed or applied to other ecclesiastical purposes or reconveyed to grantor, &c

and in which the commissioners shall determine not to apply such land or ground to any of the purposes of the said recited Acts or this Act, it shall be lawful for the said commissioners, and they are hereby authorised and empowered, to exchange any such land or ground for any other land or ground which may, in the judgment of the said commissioners, be more eligible for the purpose for which the same was given; or, with the consent of the grantor or grantors thereof, or their heirs or successors, to apply such land or ground to any other ecclesiastical purposes, either as glebe or otherwise for the use of the incumbent of the parish or place, or for the purpose of any parochial or charitable school, or any other charitable or public purpose relating to any such parish or place; or to reconvey, without requiring, taking, or receiving any pecuniary consideration for such reconveyance, any such land or ground, or any part thereof, in case only a part of any such land or ground shall have been applied to the purposes of the said recited Acts or this Act, to the grantor or grantors thereof, or their heirs or successors; anything in the said recited Acts or this Act to the contrary notwithstanding.

The Ecclesiastical Commissioners may, in the exercise of the powers given to them under this section and s. 19 of 3 & 4 Vict. c. 60, apply part of the purchase money of land conveyed to them, but not used, for the purposes of the Church Building Acts (which has been taken from them by a public body under the powers of the Lands Clauses Act, 1845), in paying off a charge upon the living for money borrowed from Queen Anne's Bounty and in structural repairs to the church. These powers may be exercised although the land has, by reason of the consecration of the church, vested in the vicar (*Ex parte Vicar of Christ Church, East Greenwich*, [1896] 1 Ch. 520; 65 L. J. Ch. 331; 74 L. T. 18; 44 W. R. 520).

3 Geo. IV. c. 72.

This Act not to affect the provisions of certain Acts relating to particular parishes.

XXXV. Provided always, and be it further enacted, that nothing in this Act contained shall extend or be construed to extend to repeal or alter, vary or affect, any powers, authorities, clauses, or provisions contained in any Act or Acts of Parliament passed in the last session of Parliament, or which may be passed in this present session of Parliament, relating to any particular parish or place, or to authorise or empower the commissioners under the said recited Acts or this Act to make or enforce any order, direction, or regulation under the provisions of the said recited Acts or this Act, so as to alter or affect any such powers or authorities as aforesaid, or otherwise contrary to any clause or provision contained in any such Act or Acts of Parliament relating to any particular parish or place; and that all the powers, authorities, clauses, regulations, and provisions in such local Acts contained shall remain in full force, and be used, enforced, and applied, in the same manner and by the same persons as if this Act had not passed; anything in this Act to the contrary notwithstanding.

Saving as to ecclesiastical laws and rights of bishops, &c.

XXXVI. Provided always, and be it further enacted and declared, that neither this Act nor the said recited Acts, nor anything therein or herein contained, nor any act, matter, or thing done by or under the authority of the same, or of the commissioners under the said recited Acts or this Act, shall extend to invalidate or avoid any ecclesiastical law or constitution of the Church of England, or to destroy any of the rights or powers belonging to any bishop of any diocese, or any archdeacon, chancellor, or official.

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5 Geo. IV c. 103.

5 GEO. IV. C. 103.

An Act to make further Provision, and to amend and render more effectual three Acts, passed in the Fifty-eighth and Fifty-ninth Years of his late Majesty, and in the Third Year of his present Majesty, for building and promoting the building of additional Churches in populous Parishes.

[24th June, 1824.]

By the Short Titles Act, 1896, this Act may be cited as the Church Building Act, 1824.

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Bishops may consent to the building of additional churches or chapels, or to the purchase of buildings for that purpose, upon application and certificate of twelve or more householders that there is not accommodation for more than one-fourth of the inhabitants of the parish, at the expense of such persons or others willing to subscribe thereto.

V. . . . Whenever any twelve or more substantial householders of any parish, township, or extra-parochial place, shall certify in writing to the bishop of the diocese within which such parish, chapelry, township, or extra-parochial place shall be situate, that there is not accommodation for more than one-fourth of the inhabitants thereof for the attendance upon divine service according to the rites of the Church of England, and that they or some of them, either by themselves or with the assistance of other persons belonging to the Church of England, are desirous of raising by private subscription such sum as may be necessary for building or purchasing a church or chapel, or any building or buildings to be used as a church or chapel for the performance of the said service, and to provide out of pew rents of such church or chapel a competent stipend for the spiritual person who may officiate therein, and for a clerk thereof, and for all other expenses incident to the performance of divine service, and for

maintaining the said church or chapel, and the said bishop shall be satisfied of the several particulars contained in such application, it shall be lawful for such bishop, if he shall think fit, to signify his consent to the building or purchasing such church or chapel, as the case may be, according to such plan, and upon such site as shall be submitted to and approved by him for that purpose.

Subscribers may elect three life trustees for the management of the church or chapel, and nomination for a limited period of the spiritual person to serve it.

VI. And be it further enacted, that the several and respective persons proposing to build or purchase any such church or chapel, or any such building as aforesaid, and their assigns, respectively subscribing for that purpose sums of not less than fifty pounds each, shall elect three trustees from amongst themselves, for the management and general regulations of the temporal affairs of such church and chapel, and for the nomination to the bishop, for a limited period, of a spiritual person to serve the same; and such trustees shall be called life trustees of such church or chapel, and shall continue such trustees so long as any spiritual person nominated by them under the provisions of this Act shall serve such church or chapel.

Upon death or resignation of life trustees, new ones may be chosen to supply the vacancy.

VII. And be it further enacted, that in case any of the persons first appointed life trustees of any such church or chapel, shall during the period above mentioned happen to die, or shall signify to the other life trustees his resignation of such trust, it shall be lawful for the majority of the persons who have subscribed towards the building or purchasing such church or chapel sums not less than fifty pounds each, and being owners or renters of pews in the same, who shall be present at any meeting to be called for that purpose, and which meeting any one or more of such trustees are hereby authorised and required to call and appoint,

5 Geo. IV. c. 103.

upon fourteen days notice at the least being affixed to the door of such church or chapel, upon the two Sundays next preceding the day on which such meeting is intended to be held, from time to time to nominate and appoint, by writing under their hands, any other person having subscribed a sum not less than fifty pounds, and being an owner or renter of a pew in such church or chapel, and a member of the Church of England, a life trustee in the place of the life trustee so dying or resigning; and every such new life trustee shall in every respect be vested with such and the like powers and authorities, to all intents and purposes, as the person to whose place he may be nominated and appointed as aforesaid.

If subscribers do not exceed three they are to be deemed the trustees under this Act, and may by deed or will appoint successors.

VIII. And be it further enacted, that if the number of persons subscribing to build or purchase such church or chapel shall not exceed three, such person or persons shall be and be deemed to be the life trustee or life trustees of such church or chapel, under the provisions of this Act, and shall have, use, and exercise all such and the like powers and authorities to all intents and purposes, as any such life trustees as aforesaid, chosen under the provisions of this Act, may use and exercise; and in case of the death or resignation of any such life trustee, the person nominated by him, being a member of the Church of England, by his last will and testament, or by any instrument signed by him, shall be a life trustee in his place.

This section applies only to the first election of trustees, and there can be no subsequent appointment of trustees except in the manner pointed out in s. 7, viz., by the majority of a meeting called by the surviving trustees, even though there is only one *sol.* subscriber remaining (*Fowler* v. *Bishop of Gloucester and Bristol*, [1869] L. R. 4 C. P. 668; 38 L. J. C. P. 340; 20 L. T. N. S. 706; 17 W. R. 1026).

5 Geo. IV. c. 103.

Bishop may consent upon joint application of subscribers or parishioners, who may be willing to build a church or chapel by subscription and rates, or money borrowed upon the credit of the rates.

IX. And be it further enacted, that in any case in which application shall be made to the bishop of any diocese for his consent to the building or purchasing any church or chapel, or buildings to be used as a church or chapel, in any parish, chapelry, township, or extra-parochial place, situate within the said diocese, for the purpose aforesaid, by any person or persons belonging to the Church of England, who may be willing to subscribe one-half part at the least of the money necessary for building or purchasing the same, jointly with the parishioners of such place, who may be willing to raise the remainder of the money by rates, or to raise and borrow such sum upon the credit of the rates of such place, and the said bishop shall be satisfied of the several particulars contained in such application, it shall be lawful for such bishop, if he shall think fit, to signify his consent thereunto.

Application to the bishop shall state certain particulars as to service and free seats.

X. Provided always, and be it further enacted, that every application which shall be made under the provisions of this Act to the bishop of any diocese, shall state that the church or chapel is to be appropriated to the performance of divine service according to the rites of the Church of England, and shall offer to set apart such number or proportion of free seats as is required by the said recited Acts in cases in which churches or chapels are built or purchased under the provisions of the said recited Acts, with any money advanced by the commissioners under the said recited Acts, and shall also offer to provide out of the pew rents arising from the remaining part of the seats of such church or chapel, a competent salary for the spiritual person who may officiate therein, and for all other expenses incident to the performance of such divine service, and for maintaining the said church or

5 Geo. IV. c. 103.

chapel: Provided also, that no pew rents shall be taken, nor any service performed in such church or chapel, whether built or purchased by subscription only, or jointly by subscription and by rates, before the same shall have been duly consecrated, and a duplicate copy of such application, with the assent of the bishop of the diocese to the same, shall be deposited in such church or chapel.

In every such case, notice of the application to the bishop to be given to the patron and incumbent of the church of the parish or place.

XI. And be it further enacted, that the persons or parishioners of any parish or place as aforesaid, making such application to the bishop, shall in every such case, at the time of making the same, give notice in writing thereof to the patron and incumbent of the church of the parish, chapelry, township, or extra-parochial place, in which it is proposed to build or purchase any such church or chapel, in order to afford to such patron or incumbent the opportunity of laying before the bishop any statement in writing relating thereto, and that the said bishop shall not signify his consent to such application within three calendar months from the time when he shall have received the same, together with a certificate that the said notice has been given.

Life trustees to nominate for the first two turns or for any number of turns which may occur in forty years, a minister of the church, &c.; subsequent nominations to be by incumbent, unless made a district church,

XII. And be it further enacted, that the life trustee or trustees of any such church or chapel which shall be built or purchased by private subscription, may nominate for the first two turns which shall occur after the consecration of the church or chapel, or for any number of turns which may occur during the space of forty years after the same, to the bishop of the diocese, for his approbation and licence, a spiritual person to serve the same; and all subsequent nomination shall be in the incumbent of the parish or extra-parochial place in which such church or chapel shall be built or purchased; unless in case of such chapel being made a

district church as hereinafter mentioned, in which case such subsequent nomination shall be in the patron of the church of the original parish; and in case of any neglect of any trustee or trustees, patron, or incumbent respectively, to make such nomination, the same shall lapse, as in the case of actual benefices; and if all the subscribers entitled to elect trustees shall die before such nominations shall have been made, or such forty years shall have elapsed as aforesaid, then and in every such case the nomination shall be made by the incumbent during such period: Provided also, that if all such subscribers shall die, so that no such election of any trustee can be made, and any one of the trustees for the time shall die or vacate, then and in every such case the incumbent for the time being shall be and become a trustee, to use and exercise all powers and authorities given to trustees under the provisions of this Act.

then by patron.

To lapse if trustees do not nominate.

XIII. Provided always, and be it further enacted, that in any case in which any such church or chapel shall be built or purchased in part by means of any rates to be raised in any parish, chapelry, township, or extra-parochial place, the first and subsequent nominations of the minister of such church or chapel shall be in the incumbent of the church of the original parish in which the same shall be built or purchased, except in case of such church or chapel being made a district church, when the same shall vest in the patron as aforesaid.

If church or chapel built in part by rates, incumbent to nominate, except made a district church, when nomination shall vest in patron.

XIV. And be it further enacted, that from and after the completion of every such church or chapel, the land, ground, and site whereon the same shall be built, with the cemetery thereto belonging, if any, and which land, ground, and site shall be specified and described in the sentence of consecration of the church

Church or chapel and ground, &c. to vest in such persons as shall be specified in the sentence of

5 Geo. IV. c. 103. — — — — consecration.

or chapel, shall be and the same are hereby declared to be vested in such person or persons and their successors for ever, by such name and style as shall be specified in the sentence of consecration of the church or chapel; and such person or persons shall in every such case have perpetual succession in the name and style specified in the sentence of consecration, and shall hold the lands, grounds, and sites so vested in them as bodies corporate, by such name and style, without incurring or being subjected to any of the penalties or forfeitures of the Statute of Mortmain, or of any other law or statute whatsoever, to the use, intent, and purpose that every such church or chapel, with the cemetery to the same, if any, shall, when consecrated, be for ever thereafter set apart and dedicated to the service of Almighty God, as a place of divine worship, according to the liturgy and usages of the *united* Church of England and Ireland as by law established, and be subject to the bishop of the diocese as such.

Life trustees or churchwardens may dispose of vaults, &c., and after paying the dues to which the incumbent is entitled, the remainder shall form a fund for supplying deficiencies in minister's salary, and for repairs.

XV. And be it further enacted, that it shall be lawful for the life trustees or churchwardens respectively of any such church or chapel, and their successors, and they are hereby authorised and empowered to sell and dispose of the vaults or burial places under any such church or chapel, and of vaults or burial grounds in the cemetery or yard of the church or chapel, if there shall be any cemetery or burial ground thereto; and such life trustees or churchwardens respectively are hereby empowered and required to pay to the incumbent of the parish such dues or sums as such incumbent would be entitled to and have, of vaults or burial places of a like description in the church of the parish, and shall, after making such payments, invest or lay out the remainder of the monies thence arising in some public

funds, stocks, or securities, from time to time, and also from time to time in like manner to lay out the interest, dividends or proceeds of such public funds, stocks, or securities, or such part thereof as shall not be applied under the provisions of this Act, in like funds, stocks, or public securities; and such life trustees or churchwardens shall, out of such interest, dividends, or proceeds, from time to time make good any deficiencies, if any shall arise, in the payment of the stipends or salaries of the minister or clerk of the church or chapel, or any other payments or incidental expenses to be paid from the produce of the rents of pews or seats, by reason of the rents of pews not being adequate to the payment of such stipends, salaries, or expenses; and in the next place shall apply such interest, dividends, and proceeds in the maintaining, supporting, and repairing the church or chapel: Provided always, that if by reason of any such funds, or if the produce of pew rents being more than sufficient for all the purposes to which the same are made applicable under the provisions of this Act, there shall be a surplus of annual income, then and in any such case such surplus shall be applied in subsequent years to the purposes to which pew rents are applicable; and the pew rents shall in every such case be reduced rateably and in equal proportions, or a larger number of free seats shall be opened, as the bishop of the diocese shall order and direct.

Application of surplus income.

XVI. And be it further enacted, that it shall be lawful for the said commissioners, with consent of a majority of the subscribers entitled to elect the trustees of any such church or chapel, and of the bishop, and of the patron and incumbent, to make any such church or chapel a district church or chapel, under the provisions of the said recited Acts and this Act.

Such churches or chapels may by consent be made district churches.

5 Geo. IV. c. 103.

At expiration of forty years to become district churches without consent, if parish shall have been divided for ecclesiastical purposes.

XVII. And be it further enacted, that at the expiration of the forty years all such churches and chapels shall become in all respects district churches, without any consent being obtained for that purpose, if His Majesty in council shall have made a division of the parish or extra-parochial place for that purpose, in manner directed by the said recited Acts, or shall remain parochial chapels if no such division and appropriation of any such churches or chapels to a district shall have been made.

Powers of recited Acts, for recovery of salary of minister and pew rents, to apply to churches and chapels built by subscription, &c.

XVIII. And be it further enacted, that all the powers, authorities, provisions, regulations, clauses, penalties, and forfeitures in the said recited Acts or any or either of them contained, for the securing, recovering, and paying the salaries of spiritual persons, and for the recovery of pew rents, and all regulations as to the number or proportion of free seats in churches or chapels built or purchased wholly or in part with money advanced by the commissioners under the provisions of the said recited Acts, shall extend and be in full force, and be applied in all cases of any such churches or chapels as aforesaid, being built or purchased by subscription or by rates, under the provisions of this Act, as fully and effectually, to all intents and purposes, as if the same and each and every of them were severally and separately re-enacted and repeated in this Act.

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7 & 8 GEO. IV. C. 72.

7 & 8 Geo. IV. c. 72.

An Act to amend the Acts for building and promoting the building of additional Churches in populous Parishes.

[2nd July, 1827.]

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Commissioners may divide parishes and extra-parochial places into districts under 58 Geo. III. c. 45.

II. And be it further enacted, that it shall be lawful for the said commissioners to divide any parish or extra-parochial place into such ecclesiastical districts in manner provided by the said Act passed in the fifty-eighth year of the reign of his late Majesty King George the Third, and if there shall not be any burial ground within such district, then, and in every such case, until a burial ground shall be provided, the bodies of persons dying within such district may be interred in the cemetery of the parish church in all respects as if such division had not taken place.

Burials in cemetery of parish church where a district has no burial ground.

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1 & 2 WILL. IV. C. 38.

1 & 2 Will. IV. c. 38.

An Act to amend and render more effectual an Act passed in the seventh and eighth years of the reign of his late Majesty, intituled "An Act to amend the Acts for building and promoting the building of additional Churches in populous Parishes."

[15th October, 1831.]

By the Short Titles Act, 1896, this Act may be cited as the Church Building Act, 1831.

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In parishes where the population

II. And be it enacted, that in all parishes and extra-parochial places the population of which, according to

1 & 2 Will. IV. c. 38.

amounts to 2,000, and the churches do not afford accommodation, or where 300 persons reside more than two miles from the church, if any person shall declare his intention of building and endowing a church or chapel, according to the conditions herein mentioned, the bishop may declare the right of nominating to be in such person or his trustees.

the returns then last made in pursuance of any Act or Acts of Parliament, shall amount to two thousand persons, and in which the existing churches or chapels do not afford accommodation for more than one third of the inhabitants for the attendance upon divine service according to the rites of the united Church of England and Ireland, and also in all parishes and extra-parochial places in which three hundred persons, whatever may be the amount of the whole population, shall be resident upwards of two miles from any such existing church or chapel and within one mile of the site upon which a new church or chapel is proposed to be erected under the provisions of this Act, and where any person or persons belonging to the Church of England shall declare his, her, or their intention of building a church or chapel, or of purchasing any building fit in all respects to be used as a church or chapel for the performance of divine service as aforesaid, or where a church or chapel has already been built on the faith of the said recited Act of the seventh and eighth years of the reign of King George the Fourth, in such a situation within the said parish or place as shall be adapted to the convenience of that part of the inhabitants for whom such additional accommodation is necessary, and where such person or persons shall declare their intention of providing a sum of one thousand pounds at the least by way of endowment for such church or chapel, to be secured upon lands or money in the funds, in addition to the pew rents and profits arising from the said church or chapel, in case any such rents shall be taken, and shall also declare his, her, or their intention of providing a fund for the repairs of the said church or chapel, in manner following (namely), one sum, equal in amount to five pounds upon every one hundred pounds of the original

cost of erecting and fitting up or of purchasing such chapel or building, to be secured upon lands or money in the funds as aforesaid, and also a further sum to be reserved annually out of the pew rents of the said church or chapel, after the rate of five pounds for every one hundred pounds of the sum so to be provided as last aforesaid, and also if such person or persons shall further declare his, her, or their intention of setting apart or appropriating one third at least of the sittings in such church or chapel to be and continue for ever as free sittings, it shall be lawful for the bishop of the diocese in which such parish or extra-parochial place is locally situate, if he shall see fit, and he is hereby authorised, to declare by writing under his hand and seal that the right of nominating a minister to such church or chapel, when so built or purchased and endowed as aforesaid, and when the conditions hereinbefore mentioned shall have been performed, shall for ever thereafter be in the person or persons so building or purchasing and endowing the same, his, her, or their heirs and assigns, or in such trustee or trustees, being members of the united Church of England and Ireland, as he, she, or they shall appoint, and in such future trustee or trustees, being members of the united Church of England and Ireland, as shall from time to time be nominated by writing under the hand or hands of the trustees or trustee for the time being of the said church or chapel, or the major part of them, or chosen in such manner as may in the first instance be agreed upon by the persons building and endowing such church or chapel, or the major part of them, and the bishop of the diocese, in writing under their hands and seals, in the place and stead of any one or more who shall from time to time die, resign, or become incapable of acting, or in

1 & 2 Will. IV. c. 38.

1 & 2 Will. IV. c. 38.

such ecclesiastical person, or body corporate, and his or their successors, as the persons so applying shall at the time of application to the bishop nominate and appoint: Provided always, that if it should happen that all the trustees of the said church or chapel for the time being should die without having appointed any other trustee or trustees as their successors, then and in such case it shall be lawful for the incumbent for the time being of the said church or chapel, with consent of the bishop of the diocese, to appoint a requisite number of trustees to supply the vacancies; and provided also, that the patronage of any such church or chapel shall not at any time be vested in or held in trust by more than five persons, except in cases where such patronage shall pass by descent to coparceners, or by the custom of gavelkind to more than five, or shall be conveyed by will or deed to more than five children, grandchildren, nephews, or nieces of the grantor or devisor: Provided also, that no church or chapel built for the accommodation of three hundred persons resident upwards of two miles from the existing parochial church or chapel shall be placed nearer than two miles from such existing church or chapel.

In case of failure of appointment of trustees.

Limiting the patronage in trust.

New church not to be within two miles of existing church.

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Persons intending to build and endow to give notice to the patron and incumbent, stating particulars.

VII. And be it further enacted, that in all cases whatsoever under this Act, any person or persons intending to build or purchase and endow any such church, chapel, or building as aforesaid, in any such parish as aforesaid, shall, in the first place, cause to be served upon the patron or patrons and incumbent of such parish a notice in writing of such intention, which notice shall specify the various particulars hereinbefore mentioned, and shall also state the number of persons intended to

be accommodated in such church or chapel and the amount of money intended to be laid out in the building or purchasing thereof; and in case such patron or patrons shall within two calendar months after being served with such notice as aforesaid, bind him, her, or themselves, by bond, or other sufficient security to the said commissioners in such cases as shall come before them, and to the bishop of the diocese in all other cases, that he, she, or they shall within two years thereafter build or purchase and completely finish and endow, an additional church or chapel in such parish, to the satisfaction of the bishop of the diocese, and that he, she, or they shall also comply with and perform all and singular the conditions hereinbefore mentioned, then and in such case such patron or patrons shall be preferred to any other person or persons so intending to build or purchase such additional church or chapel as aforesaid: Provided always, that no declaration of the right of nominating a minister to any church or chapel built and endowed under the provisions of this Act shall in any case take effect until such church or chapel shall have been duly consecrated: Provided always, that in case any such church or chapel has been or shall hereafter be built or endowed by subscription, the application to the bishop or commissioners of the major part in value of the subscribers shall be deemed and taken to be the application of the party building or endowing the same: Provided always, that the churches or chapels already built and completed on the faith of the said recited Act of the seventh and eighth years of the reign of King George the Fourth be excepted as to the two months notice, such notice having already been given to His Majesty's said board of commissioners and incumbents when such churches or chapels were built.

If the patron within two months after such notice shall bind himself to build and endow to the satisfaction of the bishop of the diocese, he shall be preferred.

1 & 2 Will. IV. c. 38.

Preference to be given to enlargement of churches in certain cases.

VIII. And be it further enacted, that where there is a population of not less than one thousand persons in any parish, district parish, district chapelry, or extra-parochial place within two miles from an existing church, if there be any person or persons who shall be desirous of enlarging the church accommodation therein, and who shall, with the consent of the select vestry or persons exercising the powers of vestry in such parish, signify such their intention to the bishop of the diocese, or to the said commissioners, as the case may be, and shall also bind themselves in a bond or other sufficient security to the said bishop, or to the said commissioners, as the case may be, that they will within two years from the date of declaring such their intention as aforesaid enlarge the existing church so as to add one fourth to its then existing church accommodation, so that more than one third of the parishioners shall be accommodated, then and in all such cases such persons, having complied with such conditions as aforesaid, shall be preferred to any person or persons proposing to build and endow any new chapel in such parish or extra-parochial place under the provisions of this Act: Provided always, that plans for the enlargement of such existing church shall in all cases be prepared, and, before the commencement of such enlargement, shall be laid before the bishop of the diocese, or the said commissioners, as the case may be, for his or their approbation thereof; and that a certificate from an architect employed therein, as to the due execution of such plans, shall in every case be sent to the said bishop, or to the said commissioners, as the case may be, on the completion of the enlargement of such church.

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Commissioners or bishop may assign a district to every church, and determine the offices to be performed therein.

X. And be it further enacted, that the said commissioners, with consent of the bishop of the diocese in all such cases as shall come before them, and the bishop of the diocese alone in all such other cases as are hereinbefore mentioned, and also with the consent of the patron and incumbent in all other cases in which additional churches or chapels shall have been already built and endowed, shall, with all convenient speed, proceed to assign a particular district to every such church or chapel, except where from special circumstances they shall deem it not advisable to assign a district, and such district shall be under the immediate care of the minister who shall have been duly licensed to serve such church or chapel, so far only as regards the visitation of the sick and other pastoral duties, and shall not be deemed a district for any other purpose whatsoever: Provided always, that it shall be lawful for the said commissioners, with the consent of the bishop of the diocese, in all such cases as shall come before the said commissioners, and for the said bishop alone in all other cases, to determine whether baptisms, churchings, or burials shall be solemnised or performed in any such church or chapel, or not; and the said commissioners or bishop respectively, as the case may be, shall cause a description of the boundaries of the district assigned by them to such church or chapel to be registered in the registry of the bishop of the diocese, and shall also cause their order and direction in writing, as to all offices to be performed in any such church or chapel, to be registered in the registry of the diocese.

Boundaries of the district to be registered.

Provision in cases where districts extend beyond one parish.

XI. Provided always, and be it enacted, that in cases where the district to be provided for any church or chapel erected or to be erected shall extend into more parishes than one, all the conditions hereby directed to

1 & 2 Will. IV. c. 38.

be complied with shall be observed with respect to the patrons and incumbents of each parish any part of which shall be comprised in such district, and the patron or patrons, incumbent or incumbents, of each such parish shall be entitled to such and the same notices, and such and the same rights and privileges, as if such district were solely situate in one only of such parishes.

Churches or chapels to be perpetual curacies.

XII. And be it further enacted, that every such church or chapel to which such particular district has been assigned as aforesaid shall be deemed a perpetual curacy, and shall be considered in law as a benefice presentative, so far only as that the license thereto shall operate in the same manner as institution to any such benefice, and shall render voidable other livings in like manner as institution to any such benefice; and the spiritual person serving the same shall be deemed the incumbent thereof; and such incumbents shall have perpetual succession, and shall be and are hereby declared to be bodies politic and corporate, and may receive and take such endowments in lands or tithes, or both, or any such augmentation, as shall be granted to them or their successors; and all such incumbents, and all persons presenting or appointing any such incumbents, shall respectively be subject to all jurisdictions and laws, ecclesiastical or common, and to all provisions, regulations, penalties, and forfeitures contained in any Acts of Parliament in force relating thereto respectively, and in case of any failure or neglect in not presenting or nominating any such incumbent for the space of six months, such presentation or appointment shall thereupon lapse, as in cases of actual benefices; and all churches or chapels built or appropriated under the provisions of this Act shall be subject to the jurisdiction of the bishop of the

Powers and duties of persons serving the same.

Jurisdiction.

diocese and the archdeacon of the archdeaconry within which the same shall be locally situated.

District churches not to be held with the original.

XIII. And be it further enacted, that no such church or chapel to which a particular district has been assigned as aforesaid shall be tenable or holden with the original church of the parish, chapelry, or place in which such church or chapel has been built, or with any other benefice having cure of souls: Provided always, that no person holding any benefice shall be exempt from residence upon such benefice in respect of any duty which he may perform in any such church or chapel to which no district shall have been assigned as aforesaid.

The laws relating to baptisms, burials, &c. to apply to the churches hereby authorised to perform them.

XIV. And be it further enacted, that where the said commissioners or bishop of the diocese respectively, as the case may be, shall have determined that baptisms, churchings, or burials shall be solemnised or performed in any such churches or chapels, all Acts of Parliament, laws, and customs relating to the performance of such offices of the church shall apply to such churches or chapels as to the performance of such offices respectively: Provided always, that all fees, dues, offerings, and other emoluments, which of right or custom belong to the incumbent or clerk of any parish, chapelry, or place in which such church or chapel shall have been or shall be erected, shall be received by or for and on account of such incumbent and clerk respectively, and be paid over to them, anything in the said recited Acts contained to the contrary notwithstanding, except such portions of the said fees, dues, offerings, or other emoluments as the said commissioners, with the consents of the bishop of the diocese, the patron, and the said incumbent respectively, in those cases which shall come before the said commissioners, by order under their common seal, or the bishop of the diocese alone, with

Fees.

1 & 2 Will. IV. c. 38.

the consent of the patron and incumbent, in all such other cases as hereinbefore mentioned, by order under his hand and seal, shall assign to the minister of such church or chapel; and every such instrument of assignment shall be registered in the registry of the bishop of the diocese within which such church or chapel shall be locally situated.

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Church-wardens to be appointed.

XVI. And be it further enacted, that two fit and proper persons shall be appointed to act as churchwardens for every church or chapel built or appropriated under the provisions of this Act, at the usual period of appointing parish officers in every year, and shall be chosen, one by the incumbent of the church or chapel for the time being, and the other by the renters of pews in such church or chapel; and the two persons, when so elected churchwardens, shall appear, and be admitted and sworn according to law, and shall collect and receive the rents of the seats and pews, and pay over the residue thereof which shall remain after the annual reservation aforesaid for repairs, and after paying the salary of the clerk, beadles, pew-openers, and other expenses incident to the performance of divine service, to the minister of the said church or chapel, to be taken by the said minister to and for his own use by way of stipend, in addition to the yearly interest or dividends which shall arise from the landed or funded endowment hereinbefore mentioned; and the said churchwardens shall also do, perform, and execute all lawful acts, matters, and things necessary and requisite for and concerning the repairs, management, good order, and decency of behaviour to be kept and observed in the church or chapel by the congregation thereof; and the persons so to be appointed or chosen churchwardens

shall continue in their said office until others shall be chosen in like manner in their stead; and all the persons so chosen churchwardens are hereby authorised and empowered, in case of non-payment of the rents of the seats and pews of the church or chapel for which they shall be appointed, to enter upon and sell the same, or else to sue for and recover the same by action or actions for such rents, in the names of "the churchwardens of the church or chapel of" (describing the same), as the case shall or may require, without specifying the Christian or surname of such churchwardens; and no such action shall abate by reason of the death or removal or going out of office of any such churchwarden. 1 & 2 Will. IV. c. 38.

In order that a person may be qualified to be elected a churchwarden under this section he must reside within the parish (*R.* v. *Cree*, [1892] 67 L. T. 556; 57 J. P. 72).

Property conveyed for the site of any church under this Act not to be subject to question after five years.

XVII. And be it further enacted, that from and after the expiration of five years after the transfer or conveyance of any messuages, lands, grounds, tenements, or hereditaments, to any person or persons, as a site for any church or chapel, or any church or chapel yard or cemetery, under the provisions of this Act, the said messuages, lands, grounds, tenements, or hereditaments shall become and be and remain absolutely vested in the person or persons to whom the same are conveyed, his, her, or their heirs and assigns; provided that any person to whom any messuages, lands, grounds, tenements, or hereditaments shall have been conveyed for the purposes of this Act shall, within two months after any judgment in ejectment shall have been obtained against him for such messuages, lands, grounds, tenements, or hereditaments, tender or pay to the lessor of the plaintiff in such ejectment his costs on such eject-

1 & 2 Will. IV. c. 38.

ment, and such sum of money as a jury shall in the manner hereinafter mentioned find to have been the value of the said messuages, lands, grounds, tenements, or hereditaments at the time when such messuages, lands, grounds, tenements, or hereditaments were conveyed for the purposes of this Act.

The jury who shall try any ejectment, or a jury under a writ of enquiry, shall ascertain the value of the premises.

XVIII. And be it further enacted, that the jury who shall try any ejectment brought for the recovery of any messuages, lands, grounds, tenements, or hereditaments which have been conveyed for the purposes of this Act, or if judgment on ejectment shall have been obtained by default, or for not confessing lease, entry, and ouster, a jury under a writ of enquiry (which writ of enquiry the court in which such action shall be brought is hereby empowered to issue) shall ascertain the value of such messuages, lands, grounds, tenements, or hereditaments at the time when they were conveyed for the purposes of this Act; and the value so found shall be endorsed by the judge who tried the ejectment on the postea, or shall be returned to the court by the sheriff or under-sheriff or other person before whom any writ of enquiry shall be executed under this Act, in the same manner as other inquests are returned on writs of enquiry.

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Powers of Act 59 Geo. III. extended to persons subscribing towards purchasing sites for churches or chapels.

XXI. And whereas the said commissioners acting under the powers of the said recited Act of the fifty-ninth year of the reign of King George the Third have executed deeds or instruments for the purpose of discharging subscribers towards building churches or chapels, and also subscribers towards purchasing sites on which churches or chapels have been built, from the payment of pew rents in such churches or chapels: And whereas doubts have arisen whether the powers of the said Act extend to cases of persons subscribing towards

purchasing sites for churches or chapels: Be it enacted, that it shall be lawful for the said commissioners, in any case in which they shall deem it expedient, to make and execute any deed or instrument, or to confirm any deed or instrument already made by them, discharging any person or persons subscribing towards either of the purposes aforesaid, either wholly or in part from the payment of pew rents in the said church or chapel for the term or period and in the manner in the said Act mentioned; and all such deeds or instruments, whether hereafter to be made or already made, and afterwards confirmed in pursuance of the power hereby given, shall, as from the date and execution of such deed or instrument, be good and valid to all intents and purposes whatsoever, anything in the said recited Acts or any of them to the contrary notwithstanding. 1 & 2 Will. IV. c. 38.

Churches may be subjected to provisions of recited Acts as to pews.

XXII. And be it further enacted, that it shall be lawful for the said commissioners, if they shall think fit, in all such cases as shall come before the said commissioners, to order and direct that such church or chapel shall be subject to all the provisions of the said recited Acts, or this Act as to apportionment of accommodation in pews and free sittings, and as to pew rents.

If any person is willing to endow a chapel of ease, it may be separated from the parish church, and made a distinct parish.

XXIII. And whereas in certain parishes of large extent there exist chapels of ease at a considerable distance from the parish church, having chapelries, townships, or districts belonging or supposed to belong thereto: Be it therefore enacted, that when any person or persons shall be willing to endow any such chapel with such a provision, secured upon land, money in the funds, tithes, or other hereditaments, as shall in the opinion of the bishop of the diocese be sufficient to ensure a competent stipend to the minister of such chapel, it shall be lawful for the bishop, with the consent

1 & 2 Will. IV. c. 38.

of the patron and incumbent of the parish, by writing under his hand and seal, to declare that such chapel, when so endowed, shall thenceforth be separate from and independent of the parish church, and that the chapelry, township, or district belonging or supposed to belong thereto shall be thenceforth a separate and distinct parish for all spiritual purposes.

As to the future right of nomination to such chapel.

XXIV. And be it further enacted, that it shall be lawful for the patron, with consent of the incumbent, to make any agreement with the bishop of the diocese touching the future right of nominating a minister to such chapel, such agreement in writing to be signed and sealed by the bishop, patron, and incumbent; and that the right of nominating a minister to such chapel shall for ever thereafter be exercised according to the terms of such agreement: Provided always, that if the incumbent of any parish wherein such chapel of ease is situate shall refuse his consent to such separation or agreement, then the declaration of separation, and the deed of agreement touching the right of nominating a minister to such chapel, when signed and sealed by the bishop and patron, shall be good and valid in law, and shall take effect immediately after the next avoidance of the parish church, and not before; and every declaration of separation, and every deed of agreement, made under the provisions of this Act, shall be registered in the registry of the diocese.

Churchwardens to be chosen for such new parish.

XXV. And be it further enacted, that two fit and proper persons shall be chosen yearly at the usual time of choosing parish officers, out of the inhabitants of such new parish so constituted, being members of the Established Church, to act as churchwardens of the said parish, one to be chosen by the minister, and one by the persons exercising the powers of vestry in the said new

parish; and the persons so chosen shall be duly admitted and sworn, and shall do all things pertaining to the office of churchwardens as to ecclesiastical matters, in the said new parish, in like manner as though the same had been of old time a separate and distinct parish. 1 & 2 Will. IV. c. 38.

Consent of patrons.

XXVI. And be it further enacted, that in all cases wherein the consent of the patron is required, under the provisions of this Act or of any of the Acts hereinbefore recited, the consent of bishops, deans, and chapters, or other ecclesiastical corporations or colleges acting as patrons of benefices in right of their bishoprics, dignities, or corporate capacities, shall be as good and valid, for all the purposes of the said Acts, as though such consent had been given by a patron in fee simple.

Act not to affect any local Act with respect to churches already built, unless with the consent of the patron.

XXVII. And be it further enacted, that nothing in this Act contained shall extend or be construed to extend to repeal, alter, vary, or affect, any powers, authorities, clauses, or provisions contained in any Act or Acts passed relating to any particular parish or place, so far as relates to any church or chapel already built, unless with the consent of the patron and incumbent and of the select vestry or persons exercising the powers of vestry in such parish or place, or contained in any deed or deeds of trust executed under the sanction of the bishop of any diocese, for the regulation of any church or chapel already built.

Act to extend to the Isle of Man, &c.

XXVIII. And be it further enacted, that all the provisions of this Act shall extend and be construed to extend *to the Isle of Man, and* to the islands of Guernsey, Jersey, Alderney, and Sark.

This Act is repealed as to the Isle of Man by 60 & 61 Vict. c. 33.

2 & 3 Will. IV. c. 61.

2 & 3 WILL. IV. c. 61.

This is a Church Building Act; its effect is given in the note to s. 6 of 59 Geo. III. c. 134, *ante*, p. 522.

1 & 2 Vict. c. 107.

1 & 2 VICT. C. 107.

An Act to amend and render more effectual the Church Building Acts. [15th August, 1838.]

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By the Short Titles Act, 1896, this Act may be cited as the Church Building Act, 1838.

Certain notices may be served on patron alone if there be no incumbent.

II. And be it further enacted, that where notices by the said last-recited Act are required to be sent to or served upon the patron and incumbent a notice to the patron alone shall be sufficient in those cases where, at the time such notices are required to be sent or served as aforesaid, there shall be no incumbent of the parish in which such church or chapel is built or proposed to be built and endowed under such last-recited Act or this Act, and where such parish shall have remained without an incumbent for the space of twelve months.

The last-recited Act is 1 & 2 Will. IV. c. 38.

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Form of grant or conveyance with respect to churches and chapels under 1 & 2 Will. IV. c. 38.

VI. And be it further enacted, that all grants, conveyances, and assurances of any site for any church or chapel, or any churchyard, under the provisions of the said last-mentioned Act or this Act, in respect of any messuages, buildings, lands, grounds, tenements, or

hereditaments, whether belonging to Her Majesty, as part of the Duchy of Cornwall or of the Duchy of Lancaster, or otherwise, or to any body or persons whatever, may and shall be made according to the form following, or in such other form as the case may require, or as near thereto as the circumstances of the case will admit; *videlicet*, 1 & 2 Vict. c. 107.

"I [or we, or the corporate title, if a corporation,] under the authority of an Act passed in the first year of the reign of her present Majesty, intituled 'An Act to amend and render more effectual the Church Building Acts,' do hereby freely and voluntarily give to Her Majesty's commissioners for building new churches [or to], [as the case may require,] *and by these presents freely and voluntarily, and without any valuable consideration*, [if the lands, et cetera, are conveyed for a valuable consideration leave out the words in italics, and insert "do for and in consideration of the sum of to me, or us, or the paid,"] hereby, under the authority of the said recited Act, grant, convey, and release to the said all [describing the premises to be conveyed,] and all [my, or our, or the] right, title, and interest of [if a corporation] to and in the same and every part thereof, to hold to the said and their successors for the purposes of the said Act, and to be devoted, when consecrated, to ecclesiastical purposes for ever, by virtue and according to the true intent and meaning of the before-mentioned Act. In witness, et cetera."

And all such conveyances and assurances shall be valid and effectual in the law to all intents and purposes, and shall be a complete bar to all estates tail and other estates, right, titles, trusts, interests, and incumbrances whatsoever.

1 & 2 Vict. c. 107.

To remove doubts as to the meaning and extent of the 23rd section of the Act 1 & 2 Will. IV. c. 38.

VII. And whereas it is by the said recited Act passed in the first and second years of his late Majesty King William the Fourth, amongst other things, enacted, that in certain parishes of large extent, where there exist chapels of ease at a considerable distance from the parish church, having chapelries, townships, or districts belonging or supposed to belong thereto, when any person or persons should be willing to endow any such chapel with such a provision secured upon land, money in the funds, tithes, or other hereditaments as should in the opinion of the bishop of the diocese be sufficient to ensure a competent stipend to the minister of such chapel, it should be lawful for the bishop, with certain consents therein mentioned, to declare that such chapel, when so endowed, should thenceforth be separate from and independent of the parish church, and that the chapelry, township, or district belonging or supposed to belong thereto should be thenceforth a separate and distinct parish for all spiritual purposes; and that it should be lawful for the patron, with the consent of the incumbent, to make any agreement with the bishop of the diocese touching the future right of nomination to such chapel, such agreement to take effect in the manner therein mentioned: And whereas doubts may arise as to the extent and meaning of such provisions: Be it therefore enacted, that such provisions shall extend to any churches or chapels, with chapelries, townships, or districts as aforesaid, whether the same were or shall be erected and consecrated before or after the passing of the said last-mentioned Act.

Land parcel of Duchy of Cornwall may be conveyed for

VIII. . . . It shall be lawful for any three or more of the officers of the said duchy, who by virtue of their several offices are or shall be concerned in the general superintendence and management of the revenue and affairs

of the said duchy, and duly authorised by Her Majesty and her successors during the time that the Duchy of Cornwall is not held separately from the Crown, by any deed or instrument under their hands and seals in the form prescribed by the said recited Act of the third year of his late Majesty King George the Fourth, or as near thereto as circumstances will permit, to grant, convey, or enfranchise lands, grounds, tenements, or hereditaments for any such purposes of the said recited Acts, or any or either of them, as are in the said Acts or any or either of them specified in relation to grants to be made by public departments under the said recited Acts.

1 & 2 Vict. c. 107. purposes of recited Acts.

IX. And be it enacted, that all the powers and authorities given and conferred by the said Act passed in the fifty-eighth year of His Majesty King George the Third, intituled "An Act for the building and promoting the Building of additional Churches in populous Parishes," for enabling the bodies politic and persons therein mentioned to convey, and the commissioners to take, land for the sites of churches and chapels, shall extend to the transfer, by sale or exchange only, of land for a site for a house of residence of any incumbent, provided the same do not exceed five acres.

Extending powers, &c. given by 58 Geo. III. c. 45, as to conveying lands.

X. And be it enacted, that in all cases where a church or chapel has been or shall be hereafter built by subscription, and endowed and subsequently augmented by a grant from Queen Anne's bounty, and where the patronage of such church or chapel shall have been acquired under any of the Acts passed for regulating the distribution of such bounty, it shall be lawful for the said commissioners, with the consent of the said bishop and the patron and incumbent of the parish, district parish, or district parish in which the said church or chapel may be, to assign a district to such church or

Commissioners may assign a district to churches and chapels in certain cases.

1 & 2 Vict. c. 107.

chapel, and make the same a district parish, and that the patronage of such church or chapel shall not be affected thereby.

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Any parish or extra-parochial place may be divided into distinct and district parishes or district chapelries at the same time, or at separate times.

XII. . . . It shall be lawful for Her Majesty in council, where she shall judge fit, on a representation to be made to her by the said commissioners of the expediency of the same, to direct, by an order in council, the dividing off from any original parish or extra-parochial place any part or parts thereof, and forming the same into a distinct and separate parish or distinct and separate parishes, or into a district parish or district parishes, either at the same time or at separate times, and to make any extra-parochial place, or any part thereof, a district parish or district chapelry, or a part of such district parish or district chapelry, and also at any time to direct the dividing off any such separate and distinct parish or district parish so formed into other distinct and separate or district parish or parishes, or district chapelry or chapelries; provided always, that all such divisions, and all parishes so divided, shall respectively be under and subject to the like consents and to the same rules and regulations as are provided in the said recited Acts or this Act with respect to distinct and separate parishes and district parishes and district chapelries respectively; and that the nomination to the chapel of a chapelry district so taken from any distinct and separate parish or district parish as aforesaid shall belong to the incumbent of the distinct and separate parish or district parish out of which such district chapelry shall have been taken, and that the sub-division of a district parish shall not take effect during the time of the existing minister of such district church, without his consent.

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1 & 2 Vict. c. 107.

Commissioners, with consent of bishop, &c. may make any church or chapel the parish church of any parish, and the parish church a district church or chapel of ease.

XVI. . . . That it shall be lawful for the said commissioners, with the consent in writing of the bishop of the diocese and of the patron of the parish church, and with the consent also of the vestry or persons possessing the power of vestry, to order and direct, by instrument under their common seal, that any church or chapel in any parish shall become and be and remain the parish church of such parish, in the stead of the ancient parish church; and the said church or chapel so constituted the parish church shall thenceforth become and be and remain, and be taken in law to be the parish church of such parish, as fully and effectually, for all purposes and in relation to all rights, emoluments, endowments, dues, privileges, and all other matters and things, civil or ecclesiastical, theretofore belonging to the parish church, or patron or lay impropriator (if any thereof), as if the same had been always the parish church of such parish; and the said commissioners are hereby empowered to authorise and direct the transfer of the endowments, emoluments, or rights of or belonging to the old and existing church of such parish, or to the incumbent for the time being thereof, to any such church or chapel so made and constituted the parish church as aforesaid, and to the incumbent thereof for the time being, and his successors; and it shall be lawful in every such case for any trustees of any such ancient church as aforesaid, or of any rights, emoluments, and endowments of or belonging to any such church, or to the incumbent thereof for the time being, and they are hereby required (and indemnified for so doing) to transfer all such rights, emoluments, and endowments, according to the direction of the said commissioners, to such church or chapel so constituted the parish church as aforesaid or to the incumbent thereof; and immediately from and after any

1 & 2 Vict. c. 107.

such transfer as aforesaid all tithes or commutations for tithes, moduses, or other compositions for tithes, and all emoluments, dues, fees, offerings, oblations, and other profits and advantages, and all messuages, glebe and other lands, tenements, or hereditaments, rents, sums of money, or real or personal chattels whatsoever, and all rights and privileges whatsoever and wheresoever, wherewith any such ancient church may be endowed, or to which the minister thereof then is or at any time theretofore was or ought to be entitled, shall severally and respectively become and be vested in the minister for the time being of the said church or chapel so made the parish church as aforesaid, and his successors for ever, in as full and ample a manner as the minister of the ancient church might or could have received and enjoyed the same in case such substitution or transfer had not been made; and every such instrument of substitution and transfer shall be registered in the registry of the diocese, and enrolled in the high court of chancery; and all Acts of Parliament, laws and customs relating to the publishing banns of marriage, and celebration of marriages, christenings, churchings, and burials, and to all ecclesiastical fees, oblations, and offerings, shall apply to every such church or chapel so constituted the parish church as aforesaid, in like manner in every respect as to the former parish church of the said parish; and such former parish church shall from such time be and be deemed to be a district church or a chapel with or without a district, as the said commissioners shall in such case direct: Provided always, that no such instrument of substitution or transfer shall take effect till after the first avoidance of such ancient parish church, unless with the consent in writing of the actual incumbent thereof, in which case such

incumbent shall be and is hereby declared to be to all intents and purposes the rector, vicar, or perpetual curate, as the case may be, of the church or chapel so constituted the parish church, instead of rector, vicar, or perpetual curate of the former parish church, without any presentation, institution, induction, collation, or other form of law being had, observed, or required: Provided also, that the chancel (if any) of such former parish church shall continue to be repaired in such manner and by the same person or persons as are now by law or custom liable to the repairs thereof. 1 & 2 Vict. c. 107.

XVII. And be it further enacted, that the incumbent of such parish next succeeding after such substitution and transfer as aforesaid shall be and is hereby declared to be the rector, vicar, or perpetual curate, as the case may be, of such church so made the parish church as aforesaid; and that the person or persons who for the time being would have had a right of presenting, nominating, or appointing the incumbent to the former parish church, in case such transfer and substitution as aforesaid had not been made, shall thenceforth, in lieu thereof, when any vacancy occurs, have such and the like right of presenting, nominating, or appointing the incumbents of the church so made the parish church as aforesaid, as he, she, or they respectively would have had with respect to the former parish church. Incumbent of former parish church to be incumbent of the new parish church.

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XIX. And be it further enacted, that this Act shall extend only to that part of the United Kingdom called England and Wales, *and to the Isle of Man*, and to the islands of Guernsey, Jersey, Alderney, and Sark. This Act to extend only to England and Wales, Isle of Man, &c.

This Act is repealed as to the Isle of Man by 60 & 61 Vict. c. 33.

3 & 4 Vict. c. 60.

3 & 4 VICT. C. 60.

An Act to further amend the Church Building Acts.

[7th August, 1840.]

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License in mortmain not necessary in cases of endowment, grant, or conveyance of houses, lands, &c. under the Church Building Acts.

2. And be it enacted, that in any case where, under the hereinbefore recited Acts or either of them, or this Act, an endowment, grant, or conveyance, consisting of or arising out of houses, lands, tithes, advowsons, rent-charges, tenements, or other hereditaments, or consisting of money to be laid out in lands or other hereditaments, is authorised to be made for the purpose of a site for any church or chapel, or churchyard, or parsonage house, or glebe, or for the use or benefit of any church or chapel, or of the incumbent or minister thereof, or for the repairs thereof, such endowment, grant, or conveyance whether made before or after the passing of this Act shall be good and valid, without any license or writ of Ad quod damnum, the Statutes of Mortmain or any other statute or law to the contrary notwithstanding.

The statute 2 & 3 Vict. c. 49 is a Church Building Act, but it contains no provisions affecting the law of burial.

See s. 8 of 14 & 15 Vict. c. 97.

Mortmain Acts to apply where endowment exceeds the annual value of 300*l.*

3. Provided nevertheless and be it enacted, that nothing herein contained shall authorise an exemption from the provisions of the Mortmain Acts, where, in the case of an endowment as aforesaid for the use or benefit of any church or chapel, or of the incumbent or minister thereof, such endowment, whether made at one period or at different periods, shall in any one case

exceed in the whole the clear annual value of three hundred pounds. 3 & 4 Vict. c. 60.

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Commissioners with consent of bishop, or bishop alone, may order the fees for ecclesiastical offices to belong, after next avoidance of parish church, to the incumbent of the endowed church or chapel.

18. And be it further enacted, that in any case in which the said commissioners, or the bishop of the diocese, as the case may be, shall hereafter grant the patronage of any church or chapel built and endowed or to be built and endowed under the said recited Acts passed in the first and second years of the reign of his late Majesty King William the Fourth, and in the first and second years of the reign of her present Majesty, or either of them, and shall hereafter assign a particular district to such church or chapel under the said first mentioned Act, and shall determine under that Act that the offices of baptisms, churchings, or burials, or some or one of them, shall be performed in such church or chapel, it shall be lawful for the said commissioners if they think fit with the consent in writing of the bishop of the diocese, or for the bishop of the diocese alone, as the case may be, to order and direct that all or a portion of the fees arising from the performance of such offices and from the making, opening, or using any catacombs, vaults, or ground for burials of or belonging to such church or chapel shall, from and after the next avoidance of the parish church of the parish in which such church or chapel is situated, belong and be paid to the incumbent of such church or chapel for his own use and benefit; and every such order or direction shall be good and valid, anything in the said recited Acts or either of them to the contrary notwithstanding; and every such order and direction shall be registered in the registry of the diocese.

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8 & 9 Vict. c. 70.

8 & 9 VICT. C. 70.

An Act for the further Amendment of the Church Building Acts. [31st July, 1845.]

By the Short Titles Act, 1896, this Act may be cited as the Church Building Act, 1845.

The statute 7 & 8 Vict. c. 56, although a Church Building Act, contains no provision affecting burials.

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Explanation and extension of the provisions of 3 Geo. IV. c. 72, s. 30.

. . . Notwithstanding any limitation or restriction or other thing contained in the hereinbefore recited Act passed in the third year of the reign of his late Majesty King George the Fourth, where a new church has been already built or shall hereafter be built in any parish or district parish, or ancient or parochial chapelry, and where the bishop of the diocese and the patron and incumbent of such parish, district parish, or ancient or parochial chapelry shall at any time certify to Her Majesty's commissioners for building new churches that it will be for the convenience of such parish, district parish, or ancient or parochial chapelry that such new church, being duly consecrated, should be substituted for the old or existing church situate therein, it shall be lawful for the said commissioners, by an instrument under their common seal, with the consents of such bishop, patron, and incumbent, under their hands and seals, to declare that such new church, being duly consecrated, shall be substituted for such old or existing church, and to transfer the endowments, emoluments, or rights belonging to such old or existing church, or to the incumbent or minister thereof, to such new church, and to the incumbent or minister thereof, and his successors; and

it shall be lawful in every such case for the trustees (if any) of such old or existing church, or of any rights, emoluments, or endowments belonging thereto, or to the incumbent or minister thereof, and they are hereby required, and indemnified for so doing, to transfer the same according to the direction of the said commissioners; and immediately from and after such transfer all glebe lands, tithes, and other endowments, emoluments, fees, and profits, and every matter or thing, whether real or personal, and all rights and privileges wherewith any such old or existing church is, or was at the time of such substitution, endowed, or to which the incumbent or minister thereof was or is entitled, shall be vested in and belong to the incumbent or minister for the time being of such new church, and his successors, in as ample a manner as the incumbent or minister of the old or existing church might have enjoyed the same if such transfer had not taken place, and the incumbent or minister of such old or existing church shall thereupon be, to all intents and purposes, the rector, vicar, perpetual curate, or minister, as the case may be, of such new church, instead of rector, vicar, perpetual curate, or minister of such old or existing church, without any presentation, institution, induction, collation, or other form of law being had, observed, or required; and such new church shall thereupon have the same rights and privileges as such old or existing church, and such offices of the Church as were performed and celebrated in such old or existing church shall be performed and celebrated in such new church, and such new church shall be to all intents and purposes in lieu of the old or existing church; and at any time within six months after the substitution of such new church for the old or existing church, the bishop of the diocese may of his own mere motion issue,

8 & 9 Vict. c. 70.

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or if thereunto required by any person claiming to hold a pew or seat free of rent in such old or existing church by faculty or prescription, shall issue, a commission under his hand and seal, directed to the archdeacon of the archdeaconry in which such old or existing church shall be situate, and to any two incumbents of parishes situate within such archdeaconry, and to any two laymen nominated by the churchwardens of such old or existing church, who are hereby required to nominate for such purpose two fit persons not claiming any such pew or seat as aforesaid; and such commission shall direct the commissioners thereby appointed to inquire into the rights of persons, if any, who claim to hold any such pews or seats as aforesaid; and the said commissioners, or any three or more of them, of whom the said archdeacon shall be one, shall, as soon as conveniently may be, proceed to examine into such claims, after giving fourteen days previous notice thereof, by affixing a copy of such commission on the church door of such new church; and such notice, signed by such archdeacon, shall specify the day and time and place on which such examination is to be made; and after making an examination into such claims the commissioners so appointed, or the majority of them shall, under their hands transmit in writing to the said bishop the names and residences of the persons who have substantiated their claims to such pews or seats, and if the said bishop is satisfied therewith he shall assign, under his hand and seal, to such parties respectively, convenient pews or seats in such new church, and such seats so assigned shall be held and enjoyed by the parties entitled to the same in as free and ample a manner as the pews or seats to which they had or would have been entitled in such old or existing church; and if any party shall

Claims of persons to pews in the old church to be investigated, and if proved such persons to have pews in the new church, on the same terms as in the old one.

find himself aggrieved by the finding of such commission the bishop of the diocese shall have power to afford redress, by allotting to such party seats in such new church, if the justice of the case shall in his judgment require it; and the old or existing church, if such bishop shall think fit, may thereupon be wholly or partly pulled down, under a faculty to be granted for that purpose; and the said bishop shall in that case take care that all tombstones, monuments, and monumental inscriptions in such church so pulled down are as far as may be preserved by the churchwardens, at the expense of the parish, or if it shall seem fit to the said bishop the same shall be transferred to the church so substituted as aforesaid, at the expense of the said parish or district parish, or ancient or parochial chapelry, as the case may be; provided that in case such new church shall have been built wholly or in part out of the funds placed at the disposal of Her Majesty's said commissioners under the provisions of the hereinbefore recited Acts or any of them, and such transfer shall have been made, rents for the pews or seats in such new church shall only be fixed by Her Majesty's said commissioners under the provisions of such Acts for that number of seats therein which shall exceed the number of seats provided in such old or existing church: Provided always, that nothing herein contained shall authorise the substitution of any new church in lieu of the old or existing church as aforesaid, when the advowson of or right of nomination to such new church shall belong to any other body or person than to the patron of such old or existing church, without the consents in writing of the patron and incumbent or minister of such new church. 8 & 9 Vict. c. 70.

II. The rector, vicar, perpetual curate, or minister of such old or existing church next succeeding after such Incumbent of old church and

8 & 9 Vict. c. 70. — — — his successors to be incumbent of new church.

transfer, and his successors, shall be and is hereby declared to be the rector, vicar, perpetual curate, or minister, as the case may be, of such new church; and the body or person who for the time being would have had a right of presenting or appointing the incumbent or minister of such old or existing church, in case such transfer had not been made, shall in lieu thereof, when any vacancy occurs, have such and the like right of presenting or appointing the incumbent or minister of such new church as such body or person would have had with respect to the old or existing church.

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Where any part of a cathedral church has been accustomed to be used as a parochial church, a transfer of the rights, endowments, &c. belonging to such parochial church may, with certain consents, be made by the church building commissioners to a new church; and the parochial church shall thenceforth be under the same control and subject to the same laws as to repairs as exist with

IV. That where any part of the cathedral church has been accustomed to be used as a parochial church, it shall be lawful for Her Majesty's said church building commissioners, with consent of the ecclesiastical commissioners, and with the consents of the bishop of the diocese and of the dean and chapter of such cathedral church, and with the consents also of the patron and of the incumbent or minister of such church, to transfer the rights, emoluments, tithes, and other endowments (if any) as hereinbefore particularly specified belonging to the incumbent of such church, to any new church which has been or hereafter may be built, and which is situate in the parish where such part of such cathedral is, or is deemed to be, the parish church; and in case of such transfer the same provisions hereinbefore contained, touching the rights and privileges, succession and appointment of the incumbent or minister of such new church, and the performance of the offices therein, and the examination into the claims of parties claiming to hold pews, or seats by faculty or prescription in the old parish church, and the assignment of pews or seats to those who have substantiated such claims as herein-

before mentioned, shall apply to such new church which after such transfer shall become the parish church in lieu of the former parish church so belonging to such cathedral; and such new church, and the incumbent or minister thereof shall, from and immediately after such transfer, be and remain subject in all respects to the same ordinary and other ecclesiastical jurisdiction and superintendence as the old parochial church and the incumbent or minister thereof respectively were or otherwise would have been subject to; and the part of the cathedral church so vacated shall thenceforth remain and be deemed to be part of the cathedral church itself, in the same manner and as fully as if it had never been used as a parochial church, and shall thenceforth be subject to the same control and superintendence, and to the same laws as to repairs, as exist and are in force with respect to the cathedral church itself; and the parish shall thenceforth be exempt from all further liability (if any) to keep the same in repair: Provided always, that the party or parties liable to the repair of the said part of the said cathedral church, whilst it was so used as a parochial church, shall continue to be liable to the repairs of such new church.

respect to the cathedral church.

V. That where at the passing of this Act there is not any consecrated church in one of two parishes which may have been for thirty years next before the passing of this Act united, or reputed to have been united, for ecclesiastical purposes, and where a new church has been or shall hereafter be built wholly or in part out of any funds at the disposal of Her Majesty's said commissioners in the said parish in which there is not any such church as aforesaid, the whole of such parish may, after the consecration of such new church, be disunited for ecclesiastical purposes from the other parish, and may

Parish heretofore united with another shall be disunited after new church built therein.

8 & 9 Vict. c. 70.

be formed into a separate and distinct parish for such purposes, with the same consents, in the same manner, and under and subject to the same provisions and consequences as are mentioned and contained in the hereinbefore recited Acts or any of them, or in this Act, relative to the formation of a distinct and separate parish, where the same is formed out of one parish not united with another parish.

Appointment of churchwardens for a district chapelry and consolidated chapelry.

VI. Anything in the hereinbefore recited Acts or any of them to the contrary notwithstanding, in all cases not otherwise expressly provided for, two fit persons shall be annually appointed churchwardens for the church of every district chapelry or consolidated chapelry already or hereafter to be formed under the provisions of the hereinbefore recited Acts or any of them, or this Act, such persons residing within the district chapelry or consolidated chapelry; and the first appointment of two such persons shall, with respect to the church of any district chapelry or consolidated chapelry already formed as aforesaid, take place within two calendar months after the passing of this Act, and with respect to a chapelry district or consolidated chapelry to be hereafter formed as aforesaid, within two calendar months after the formation of the same; and the first appointment of such persons, in either of such cases, shall take place at a meeting of the minister of such church and the householders of the district, to be summoned in all respects as such minister shall direct; and every subsequent appointment shall take place at the usual period of appointing parish officers, at a meeting to be summoned in all respects as if such district were a parish and such meeting were a parish vestry meeting; and in each such case one of such persons shall be chosen by the then incumbent or

minister serving such church, and the other by the householders, or the majority of such householders, residing in such district chapelry or consolidated chapelry; and the two persons, when so appointed and elected churchwardens, shall appear and be admitted according to law, and shall collect and receive the rents of the pews and seats in every such church, and pay the stipend or salary assigned by Her Majesty's said commissioners to the minister and clerk of such church, if the said commissioners have fixed the rents for the same, or assigned such stipend or salary, and shall also do, perform, and execute all lawful acts, matters, and things necessary for and concerning the management, good order, and decency of behaviour to be kept and observed in such church by the congregation thereof, and for the recovery of such pew rents, if in arrear; and the money given at the offertory at such church shall be disposed of by the minister and churchwardens of such church, in the same manner as the money given at the offertory at any parish church is by law directed to be disposed of by the minister and churchwardens of such parish; and the persons so to be appointed and chosen churchwardens shall continue in their said office until others shall be appointed and chosen in like manner in their stead. 8 & 9 Vict. c. 70.

Appointment of churchwardens for an additional church the site whereof has been accepted by the commissioners.

VII. Anything in the hereinbefore recited Acts or any of them to the contrary notwithstanding, in all cases not otherwise expressly provided for, two fit and proper persons shall be annually appointed churchwardens for any new church (without a district) already built or hereafter to be built upon a site whereof Her Majesty's said commissioners shall have accepted the conveyance, under the provisions of the hereinbefore recited Acts; and the first appointment of such persons shall take

8 & 9 Vict. c. 70. place within two calendar months after the passing of this Act with respect to a church already built and consecrated, and within two months after the consecration of a church to be so hereafter built; and the next appointment of such persons, in either of such cases, shall take place at the next usual period of appointing parish officers; and in each such case one of such persons shall be chosen by the minister of such church, and the other by the renters of pews therein, or by the majority thereof, at any meeting to be summoned, in all respects as the minister of such church, or (if there shall be no minister) as the churchwardens going out of office, shall direct; and the two persons, when so appointed and elected churchwardens, shall appear and be admitted according to law, and shall collect and receive the rents, if any, of the pews and seats in any such church, and pay the stipend and salary, if any, assigned by the said commissioners to the minister and clerk of such church, and shall also do, perform, and execute all lawful acts, matters, and things necessary for and concerning the management, good order, and decency of behaviour to be kept and observed in such church by the congregation thereof, and for the recovery of the pew rents in such church, if the same are in arrear; and the persons so to be appointed and chosen churchwardens shall continue in their said office until others shall be appointed and admitted in like manner in their stead: Provided always, that if there are no rented pews in such church the minister of such church shall appoint both churchwardens: Provided also, that if such new church is made the church of a distinct and separate parish, district parish, district chapelry, or consolidated chapelry, the several provisions of the hereinbefore recited Acts or this Act

touching the appointment and election of churchwardens for the same, and their powers and duties in each such case, shall thenceforth respectively apply to such church. 8 & 9 Vict. c. 70.

VIII. Provided always, that no churchwardens appointed under the provisions of this Act shall be churchwardens for any other duties than for those hereinbefore mentioned; but all other legal duties appertaining to the office of churchwardens shall be discharged within such district chapelry or consolidated chapelry, and in respect of the church thereof, and also in respect of any such new church as aforesaid without a district, by the churchwardens who would have discharged the same if this Act had not been passed; and that no churchwardens appointed under the provisions of this Act shall in virtue of such office be deemed overseers of the poor. No such churchwarden to be by virtue of his office overseer of the poor.

IX. . . . Where a population is collected together at the extremities of and locally situate in parishes or extra-parochial places contiguous to each other, at a distance from the respective churches of such respective parishes or extra-parochial places, and where there is or shall hereafter be a consecrated church in any of such parishes or extra-parochial places so circumstanced and situated as aforesaid, it shall be lawful for the said commissioners, with the consent of the bishop of the diocese, or if such parishes or places are situate in different dioceses, then with the consents of the respective bishops thereof, signified under his or their hands and seals, and with the consents also in like manner signified of the patrons of such respective parishes or extra-parochial places, to represent to Her Majesty in council the expediency of uniting any such contiguous parts of such parishes or parts, or the whole of such extra-parochial places, into one consolidated chapelry Explanation and amendment of part of 59 Geo. III. c. 134, as to formation of consolidated chapelries.

8 & 9 Vict. c. 70.

for such church with respect to all ecclesiastical purposes, and such representation shall contain a description of such boundaries as may appear advisable to Her Majesty's said commissioners for such consolidated chapelry; . . . and if thereupon Her Majesty in council shall think fit to order such consolidated chapelry to be so formed, such order shall be good and valid for the purpose of forming the same; . . . and (save and except in those cases where at the time of such consolidation such church was either the church of a rectory or vicarage, and then the said church shall retain its original character,) the church of such consolidated chapelry shall be deemed a perpetual curacy, and shall be considered in law as a benefice presentative, so far only as that the license thereto shall operate in the same manner as institution to any benefice, and shall render void other livings, in like manner as institution to any benefice, and the spiritual person serving the same shall be deemed the incumbent thereof, with exclusive cure of souls therein, and shall have perpetual succession, and shall be and is hereby declared to be a body politic and corporate, and he and his successors may receive, take, and hold such endowments in lands or tithes, or both, or any such augmentation, as shall be granted to him or them, in the same manner as any other incumbent is by law entitled to do; and every such incumbent shall be subject to all jurisdictions and laws, ecclesiastical or common, and to all provisions contained in any Acts of Parliament in force relating to such persons, and the church of every such consolidated chapelry shall be subject to the jurisdiction of the bishop within whose diocese and archdeaconry the communion table of such church shall be locally situated, and to all the laws in force concerning presentation and

Minister thereof to be a perpetual curate.

appointment to benefices and churches, and all other laws relating to the holding the same: Provided always, that where at the time of forming such consolidated chapelry the said church shall be full, the spiritual person filling such church shall be and remain incumbent of the said church and also of the whole consolidated chapelry. 8 & 9 Vict. c. 70.

X. And be it enacted, that banns of marriage may be published, and marriages, christenings, churchings, and burials performed, in the church of every such consolidated chapelry so formed, and, notwithstanding anything contained in the hereinbefore recited Act passed in the fifty-ninth year of the reign of his late Majesty King George the Third to the contrary thereof, the fees arising therefrom shall, unless voluntarily relinquished by them or either of them, belong to the incumbent and clerk respectively of the parishes out of which such consolidated chapelry shall have been formed, under the provisions of this Act, during their respective incumbencies, or during the time the clerk shall retain his situation; and the incumbent of such consolidated chapelry formed under this Act shall keep an account of the fees so received, and shall every year pay over the same to such incumbents and clerks respectively who would have been entitled to them if such consolidated chapelry had not been formed; and after the next avoidance of such respective incumbencies, and after the situations of such respective clerks shall have become vacant, such fees shall belong and be paid to the incumbent of such consolidated chapelry and the clerk of the church thereof. Offices of the church may be performed therein. Apportionment of fees.

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XII. And be it enacted, that it shall be lawful for Her Majesty's said commissioners to make a grant out Commissioners may in certain

8 & 9 Vict. c. 70. — cases make grants in aid of the erection of a church for such consolidated chapelry.

of the available monies in their hands for or towards the erection of new churches in aid of the erection of any new church intended to be made the church of any consolidated chapelry, although the population of the parish or extra-parochial place in which such church will be situate may not amount to four thousand persons and upwards, and although there may be church accommodation for more than one fourth of the inhabitants of such parish or extra-parochial place, provided that the consolidated chapelry to be formed under the provisions of this Act shall contain a population of at least four thousand persons, with church accommodation therein for not more than one fourth of the inhabitants thereof.

How the freehold of sites for churches, &c. shall vest.

XIII. And be it enacted, that in all cases the freehold of the site of every church of which Her Majesty's said commissioners may have accepted or shall accept a conveyance under the provisions of the hereinbefore recited Acts or any of them (as to any church not yet consecrated, when the same shall be consecrated,) shall vest in the incumbent for the time being of such church; and the freehold of every burial ground of which the said commissioners may have accepted or shall accept a conveyance under the provisions of the hereinbefore recited Acts or any of them shall, after the same shall have been consecrated, vest in the incumbent for the time being of the church to which such burial ground shall belong, or if there shall be no such incumbent, then in such body or person as the said commissioners may, with consent of the bishop of the diocese, in such special case direct, until there shall be an incumbent, and from and after that time then in such incumbent, for the use of the inhabitants of the place for which such burial ground was acquired; and the freehold of any

house, garden, and appurtenances, and land for the residence and glebe of the spiritual person serving any church, of which the said commissioners may have accepted or shall hereafter accept a conveyance, under the provisions of the hereinbefore recited Acts or any of them, shall vest in the incumbent or minister of such church for the time being; provided that nothing in this Act contained shall authorise the interment of any person under any church. 8 & 9 Vict. c. 70.

Land having been conveyed under the Church Building Acts to the Ecclesiastical Commissioners as a site for a church, a church was afterwards erected on a part of the land, and the church and part only of the land were consecrated. It was held that upon such consecration the whole of the land so conveyed to the commissioners vested in the incumbent, that the commissioners ceased to be the owners of it, and were therefore not liable under the Metropolis Management Acts, 1855 and 1862, to contribute in respect of it towards the cost of paving a new street (*Plumstead Board of Works* v. *Ecclesiastical Commissioners*, [1891] 2 Q. B. 361; 64 L. T. 830; 39 W. R. 700; 55 J. P. 791).

XIV. . . . Where any land shall have been purchased or obtained for any new or additional burial ground not within the bounds of the parish or parishes for the use of which the same shall have been so purchased or obtained, it shall be lawful for the said commissioners, if they shall think fit, in accepting a conveyance of such land for the purposes aforesaid, under the provisions of the hereinbefore recited Acts or any of them, to declare in such conveyance, or by any other instrument under their common seal, that such land shall, after the consecration thereof for the purposes aforesaid, be and be deemed to be part of the parish or parishes for the use of which such land shall have been so purchased or obtained, and, after consecration, such land shall be

Land obtained for a burial ground for any parish may be declared by the commissioners part of such parish for that purpose, although not within the bounds of such parish.

8 & 9 Vict. c. 70.

part of such parish or parishes accordingly for the purposes aforesaid.

This section is amended by 9 & 10 Vict. c. 68, *infra*, p. 614.

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Boundaries of new parishes or districts may be altered although five years may not have elapsed since such new parishes or districts were formed.

XVI. And be it enacted, that, anything in the hereinbefore recited Act passed in the third and fourth year of her present Majesty to the contrary notwithstanding, it shall be lawful for Her Majesty's said commissioners at any time to alter the boundaries of a distinct and separate parish, district parish, district chapelry, or consolidated chapelry, although five years may not have elapsed since the description of such boundaries has been . . . registered in the registry of the diocese; provided that such alteration of boundaries shall be subject to the same provisions, except as herein excepted, as are contained relative thereto in the hereinbefore recited Acts.

Church of a district chapelry and church augmented by the Ecclesiastical Commissioners for England to be a perpetual curacy, and minister a perpetual curate.

XVII. Anything in the hereinbefore recited Acts or any of them to the contrary notwithstanding, the church of any district chapelry formed or to be hereafter formed under the provisions thereof, although such church may not have been augmented by the governors of the bounty of Queen Anne, and also any church now or hereafter to be augmented by any order of Her Majesty in council ratifying any scheme of the ecclesiastical commissioners, and with a district chapelry assigned thereto, shall be and is hereby declared to be a perpetual curacy and benefice, and the license thereto shall operate in the same manner as institution to any benefice, and the minister duly nominated and licensed thereto, and his successors, shall not be a stipendiary curate, but shall be and be esteemed in law to be a perpetual curate, and body politic and corporate, with perpetual succession, and he and his successors may receive, take, and hold to himself and themselves all

such lands, tithes, and rent-charges as shall be granted unto or purchased for him or them by the said ecclesiastical commissioners, or otherwise, in the same manner as any other incumbent is by law entitled to do; and such perpetual curate shall thenceforth have, within and over the district chapelry so assigned, sole and exclusive cure of souls, and shall not be in anywise subject to the control or interference of the rector, vicar, or minister of the parish or place from which such district chapelry shall have been taken, any law or statute to the contrary notwithstanding, save and except as to any Easter dues and offerings which would not belong to the perpetual curate of such district chapelry if this Act had not been passed, and save and except also as to the fees, if any, reserved to the said incumbent on the assignment of such district chapelry, which shall still continue to belong to and shall be paid over to him by the perpetual curate of such district chapelry according to such reservation: Provided always, that nothing herein contained shall alter or affect the right of nomination or appointment belonging or hereafter to belong to any corporate body or person in respect to the church of any such district chapelry.

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The purchase money of lands sold under provisions of recited Acts need not be paid into Bank of England, though it may amount to or exceed

XIX. And be it enacted, that, anything in the hereinbefore recited Acts or any of them to the contrary notwithstanding, it shall not be necessary to pay into the Bank of England any sums of money to be paid for any lands or hereditaments to be purchased or acquired by virtue of such Acts or any of them, although the same may amount to or exceed two hundred pounds (unless Her Majesty's said commissioners shall require such sums to be paid into such bank), but the

8 & 9 Vict. c. 70. 200*l.*, but may be paid to trustees.

same may be invested in the names of trustees, as in the said Act is provided in the cases when the amount thereof shall be under the sum of two hundred pounds; and in any declaration of trust to be made of any such monies the said commissioners may make such special provisions for the investment of such monies, and the appointment of new trustees thereof, or otherwise, as they shall think fit.

The purchase money of lands sold under 58 Geo. III. c. 45, and belonging to an incumbent in right of his living, may be paid to and applied by the governors of Queen Anne's Bounty for the benefit of the incumbent.

XX. And be it enacted, that in every case in which land or other hereditaments belonging to an incumbent in right of his church shall be sold and conveyed by him to Her Majesty's said commissioners, and in which the purchase money is, under the provisions of the hereinbefore recited Act passed in the fifty-eighth year of the reign of his late Majesty King George the Third, directed to be paid into the Bank of England, or invested in the names of trustees, such purchase money shall, instead of being paid into the Bank of England, or invested in the names of trustees, be paid to the governors of the bounty of Queen Anne for the augmentation of the maintenance of the poor clergy, and be appropriated by the said governors to the benefice to which the land or other hereditaments so sold shall have belonged, and shall be applicable and disposable by the said governors to and for the benefit and augmentation of such benefice, in such and the same manner, and with such and the same powers of investment in the purchase of land, and exchange for other land and hereditaments, and otherwise, and with other powers and authorities, in all respects, according to the rules, orders, and constitutions for the time being in force for the management of the bounty of Queen Anne, as if the money so appropriated had been originally provided or appropriated by the said governors, out of

the funds at their disposal, for the benefit and augmentation of the same benefice. 8 & 9 Vict. c. 70.

Such purchase money to be paid to the treasurer of Queen Anne's Bounty, and his receipt shall be a valid discharge.

XXI. And be it enacted, that in all cases in which money shall be payable to the governors of the bounty of Queen Anne under the provision last hereinbefore contained, such money shall be paid to the treasurer for the time being of the said governors; and the receipt or receipts of such treasurer shall be an effectual discharge or effectual discharges for so much money as in such receipt or receipts shall be expressed, to the person or persons paying the same; and after obtaining such receipt or receipts the person or persons paying such money shall be absolutely discharged from all liability touching such money, and from all trusts relating thereto.

Apportionment of bequests, &c. and also of charges, to be made by the Court of Chancery.

XXII. And be it enacted, that where Her Majesty's said commissioners shall have already formed or shall hereafter form any distinct and separate parish, district parish, or district chapelry, under the provisions of the hereinbefore recited Acts or any of them, or this Act, out of any parish or extra-parochial place, it shall be lawful for the Court of Chancery, anything in the hereinbefore recited Acts to the contrary notwithstanding, on a petition being presented to the said court by any two persons resident in any such parish or extra-parochial place (such petition to be presented, heard, and determined according to the provisions of an Act passed in the fifty-second year of the reign of his late Majesty King George the Third, intituled "An Act to provide a summary Remedy in Cases of Abuses of Trusts created for charitable Purposes"), to apportion between the remaining part of such parish or place and the distinct and separate parish, or district parish, or district chapelry, any charitable devises, 52 Geo. III. c. 101.

8 & 9 Vict. c. 70.

bequests, or gifts which shall have been made or given to or for the use of any such parish or extra-parochial place, or the produce thereof, and in any such case to direct that the distribution of the proportions of such devises, bequests, or gifts, or the produce thereof, as shall be so apportioned, shall be made and distributed by the incumbent or spiritual person serving the church, or by the churchwardens of any such distinct and separate parish, district parish, or district chapelry, either jointly or severally, as the said Court of Chancery may think expedient; and it shall also be lawful for the said Court of Chancery to apportion between the remaining part of such parish or place as aforesaid, and such separate divisions or districts, any debts or charges which may have been before the period of such apportionment contracted or charged upon the credit of any church rates in such parish or place; and all such apportionments shall be registered in the registry of the diocese in which such parish or place shall be locally situate, and duplicates thereof shall be deposited with the churchwardens of such parish or place, and of each such division or district as aforesaid, and in all such cases the costs shall be at the discretion of the said court; and such apportioned debts or charges shall be raised and paid by the parish or place in which they may be apportioned in such and the like manner as the entirety was to be raised and paid, or in such manner and under such provisions and conditions as the said court shall direct, and when any securities may have been given for the same the court may order new securities to be given for the apportioned debts by such persons and bodies, and in all respects as the said court may direct, and all securities shall be valid and binding.

8 & 9 Vict. c. 70.

An estate had been held from time immemorial by the churchwardens of a parish for the repairs of the church, and the rent of one field was originally applied to the repairs of the church clock. In 1820 a new church was built, and the income of the charity was carried to the general account of the churchwardens, and applied in aid of the church rates for both churches. In 1846 the parish was divided under an order in council, and a new parish carved out of it, and assigned to the new church. Thenceforward each parish had its own church rate, and the income of the charity was applied exclusively in aid of the rates for the old parish church. On a petition by two of the inhabitants of the new parish for an apportionment of the charity between the two parishes under this section, it was held on appeal that the charity, being for the support of the fabric of a particular church, could not be apportioned (*In re Church Estate Charity, Wandsworth*, [1871] L. R. 6 Ch. 296).

Where under the Church Building Acts district parishes have been formed out of an original parish, and the Court has under this section made an order apportioning a charitable gift between these district parishes and the remainder of the original parish, such order is not to be treated as final, but the Court has jurisdiction to make fresh orders from time to time to meet the changing circumstances of such district parishes or original parish, either by discharging or varying former orders made under the section (*In re Camden Charities* (*No.* 2), [1883] 24 Ch. D. 213).

* * * * * *

Assent of the commissioners to any conveyance or other instrument shall be testified by their seal.

XXIV. That no future conveyance to be made to the said commissioners in pursuance of the hereinbefore recited Acts or any of them, or any other future instrument thereby directed to be made with their privity or assent, shall be valid and effectual unless and until the assent thereto of the said commissioners shall be testified by any seal in use by them being affixed thereto; but after such seal shall have been affixed to such instrument, such instrument shall take effect as from the making thereof; and no future instrument to which

8 & 9 Vict. c. 70.

such seal is as aforesaid so directed to be affixed, and which is directed to be registered in the registry of any diocese, shall be so registered unless and until such seal shall have been so affixed.

Unless so testified, the instrument shall not be registered.

Application of former Church Building Acts to this Act.

XXV. That the existing powers, privileges, and authorities contained in the hereinbefore first-recited Acts or any of them may be used and applied for the purpose of carrying this Act or the said Acts respectively into execution, *mutatis mutandis*, so far as the same are applicable thereto, and are not inconsistent with or repugnant to the provisions of this Act.

9 & 10 Vict. c. 68.

9 & 10 VICT. C. 68.

An Act for better enabling the burial service to be performed in one chapel where contiguous burial grounds shall have been provided for two or more parishes or places. [26th August, 1846.]

WHEREAS an Act was passed in the session of Parliament holden in the eighth and ninth years of the reign of her present Majesty, intituled "An Act for the further amendment of the Church Building Acts," whereby it was amongst other things enacted, that where any land should have been purchased or obtained for any new or additional burial ground not within the bounds of the parish or parishes for the use of which the same should have been so purchased or obtained, it should be lawful for Her Majesty's commissioners for building new churches, if they should think fit, in accepting a conveyance of such land for the purposes aforesaid, under the provisions of the thereinbefore recited Acts or any of them, to declare in such convey-

8 & 9 Vict. c. 70.

ance, or by any other instrument under their common seal, that such land should, after the consecration thereof for the purposes aforesaid, be and be deemed to be part of the parish or parishes for the use of which such land should have been so purchased or obtained, and after consecration such land should be part of such parish or parishes accordingly for the purposes aforesaid: And whereas it is expedient that the said provision of the hereinbefore recited Act should be amended: Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, that such provision shall extend to any distinct and separate parish, district parish, district chapelry, or consolidated district already or to be hereafter formed under the Church Building Acts, and to any new parish already or to be hereafter constituted by or under the proceedings of the ecclesiastical commissioners, and that where any land, wherever situated, shall have been purchased or obtained for the purpose hereinbefore recited, for the use of two or more parishes or places, it shall be lawful for the said commissioners, in accepting a conveyance of such land for the purposes aforesaid, to order and direct in such conveyance, or by any other instrument under their common seal, that any chapel which at the time of such order and direction shall have been or shall be thereafter erected on any portion of such land as aforesaid for the performance of the burial service therein, and any lodge or other building which shall at the time of such order and direction have been erected or shall thereafter be erected on any part of such land, and also any and every access or approach to and from such chapel, lodge, or other

9 & 10 Vict. c. 68.

Church building commissioners may direct that one chapel shall be used by the different parishes or places for which burial grounds contiguous to each other shall have been provided.

9 & 10 Vict. c. 68.

building, shall be for the use of all and every of the parishes or places for which such land shall have been purchased or obtained and conveyed as aforesaid, and such order and direction shall be valid and binding; and it shall be lawful for the officiating minister of each parish respectively to use (subject to the regulations hereinafter mentioned) the said chapel for the purpose of the burial service therein; and the like fees for the performance of such burials, and for the making, opening, or using any catacombs, vaults, or ground for burials within each such burial ground, shall be due and payable as are accustomed to be taken in the parish for which such burial ground shall have been purchased, obtained, and conveyed as aforesaid; and the use of such chapel, lodge, or other building by such officiating minister for the purpose aforesaid shall be subject to such regulations as the bishop of the diocese shall at any time under his hand and seal make or ordain.

Ministers of each parish may use the chapel.

Same fees payable as are due in parishes for which ground has been purchased.

By the Short Titles Act, 1896, this Act may be cited as the Church Building (Burial Service in Chapels) Act, 1846.

II. It shall be lawful for the said bishop, in consecrating such chapel as aforesaid for the purposes aforesaid, to declare in the sentence of consecration that such chapel is intended for the use of the respective parishes or places, for the performance of the burial service therein, for which such land shall have been purchased or obtained and conveyed as aforesaid; and if any additional land shall after the consecration of such chapel be purchased or obtained, and conveyed as aforesaid to the said commissioners, as a burial ground, for the use of such parish or parishes, place or places, or for the use of any other parish or parishes, place or places (such land adjoining or being near to such former land so purchased or obtained and conveyed), such

Bishop of the diocese may declare in the sentence of consecration that such chapel is intended for the use of such respective parishes or places.

chapel, subject to the regulations as aforesaid by the bishop of the diocese, may be used for the performance of the burial service in such additional ground, and such lodge or other building, and every access and approach to and from such chapel, lodge, or building, may be in like manner used for the purposes aforesaid. 9 & 10 Vict. c. 68.

III. For the enclosure of such land one boundary fence around the whole may be declared by such bishop (if he think fit) sufficient, without any sub-division fences enclosing the portions conveyed to the said commissioners for the use of the several parishes or places respectively; but if the said bishop shall think fit he may require such bound stones to be put down as may appear to him necessary for marking the boundaries of the land so conveyed as aforesaid to the said commissioners for the use of the respective parishes. One boundary fence sufficient, unless bishop direct bound stones to be put down for marking boundaries of each parish.

IV. Provided always, that nothing in this Act contained shall be construed to authorise any church rate to be made on the said parishes or any of them for the repair or sustentation of such chapel, lodge, or other building, or fence as aforesaid, but such repair or sustentation shall be provided for by such a sum of money as the said commissioners shall consider sufficient; and such sum shall be set apart, and invested in government securities in the names of trustees to be appointed by the said commissioners, and shall be held by such trustees in trust for the purposes aforesaid, and the dividends or annual proceeds arising therefrom shall be applied in and about such repair and sustentation, as and when the trustees or trustee for the time being, with the consent of the bishop of the diocese, shall deem fit from time to time to direct; and in case of a vacancy or vacancies amongst such trustees, the remaining trustees or trustee, and if there shall be no remain- This Act not to authorise any church rate for the repair of the chapel, &c. A sufficient fund for such repair or sustentation shall be set apart, and invested in the names of trustees. Vacancies amongst trustees to be filled up.

9 & 10 Vict. c. 68.

ing trustee, or no trustee that is capacitated or willing to act, the bishop of the diocese, shall supply such vacancy or vacancies, by the appointment of a fresh trustee or trustees, who shall hold such trust fund, and apply the annual dividends and proceeds arising therefrom jointly with the remaining trustees or trustee, if any, in like manner as the former trustees or trustee in whose room he or they shall be appointed.

Interpretation of Act.

V. In the interpretation of this Act, where the words "parish" or "parishes" occur therein, such words, or either of them, shall include any distinct and separate parish, district parish, district chapelry, or consolidated district already or to be hereafter formed under the provisions of the Church Building Acts, and also any new parish already or to be hereafter constituted by or under the proceedings of the ecclesiastical commissioners.

11 & 12 Vict. c. 37.

11 & 12 VICT. C. 37.

An Act to amend the Law relative to the Assignment of Ecclesiastical Districts. [14th August, 1848.]

This Act, which is a Church Building Act, contains provisions for alteration of the boundaries of districts formed under 1 & 2 Will. IV. c. 38, but no provisions relating to burials.

14 & 15 VICT. c. 97.

14 & 15 Vict. c. 97.

An Act to amend the Church Building Acts.

[7th August, 1851.]

Where a permanent provision satisfactory to the commissioners is secured in lieu of pew rents, commissioners, with consent of bishop, may direct such pew rents to cease.

I. Where any body or person endows with such permanent provision in land or money as is satisfactory to Her Majesty's commissioners for building new churches and the bishop of the diocese any church for which pew rents have been previously fixed by the said commissioners under the provisions of the Church Building Acts, and where such pew rents have not been assigned or appropriated under any local Act, such endowment or provision being made in lieu of and as a substitute for such pew rents, in whole or in part, it shall be lawful for the said commissioners, by an instrument under their common seal, with the consent of such bishop under his hand and seal, setting forth the nature of such endowment, and that it was made for the object aforesaid, to order and declare that such pew rents shall with respect to such church cease and determine, and the same shall, according to such order and declaration, cease and determine in whole or in part, and the seats or pews so exempted from rent shall thenceforth be at the disposal of the churchwardens of such church in like manner as the seats or pews of an ancient parish church, but the pew rents then due and payable shall nevertheless be payable and recoverable in the same manner as if such order had not been made.

This Act may, by the Short Titles Act, 1896, be cited as the Church Building Act, 1851.

Loss of fees and offerings

II. In all cases where any district chapelry has already been or is hereafter formed under the authority

14 & 15 Vict. c. 97.

may be compensated for by commissioners out of the first monies coming to them for that purpose in respect to the assignment of district chapelries.

of the Church Building Acts, and where, by the order in council forming such district chapelry, the fees or any part thereof arising from the performance of such of the offices of the church as are performed in the church of such district chapelry have been reserved or such fees otherwise belong to the then incumbent of the original parish or district (out of which such district chapelry is taken) during his incumbency, or to such incumbent and his successors, it shall be lawful for the said commissioners, out of any monies hereafter placed at their disposal for that purpose (not being monies placed at their disposal for the building or contributing to the building of new churches), to assign to such incumbent during his incumbency, if he still remain incumbent, or to such incumbent, as the case may require, such an annual sum as may appear to the said commissioners a just and reasonable compensation for the loss of any fees, dues, oblations, or offerings which such incumbent may sustain by reason of the transfer thereof, under the provision hereinafter contained, to the incumbent of the district chapelry.

Compensation for loss of fees, &c. in respect of formation of the consolidated chapelries.

III. Where the fees arising from the performance of the offices of the church of a consolidated chapelry already or hereafter formed under the Church Building Acts are under such Acts reserved to the incumbents of the parishes out of which such consolidated chapelry is formed during their respective incumbencies, unless voluntarily relinquished by them or either of them, compensation may be made as aforesaid by the said commissioners to such incumbents, if still entitled to such fees, for the loss of any fees, dues, oblations, or offerings which such incumbents may sustain by reason of the transfer thereof, under the provision hereinafter contained, to the incumbent of such consolidated chapelry.

14 & 15 Vict. c. 97.

Compensation for loss of fees in respect to a church built and endowed under 1 & 2 Will. IV. c. 38.

IV. Where the fees or a portion thereof arising from the performance of offices of the church in the church, with a particular district thereto, already or hereafter built and endowed, and the patronage thereof specially declared under the provisions of the Church Building Acts or this Act, are reserved or belong to the incumbent of the original parish or district out of which such particular district is taken, compensation may be made as aforesaid by the said commissioners to the then incumbent, or to such incumbent, as the case may require, for the loss of any fees, dues, oblations, or offerings by reason of the transfer thereof, under the provision hereinafter contained, to the incumbent of such church.

After compensation, fees and offerings to belong to minister of the district chapelry, consolidated chapelry, or particular district, notwithstanding any former reservation.

V. After such compensation as aforesaid has been awarded by the said commissioners or otherwise to the then incumbent, or to such incumbent, as the case may require, of the original parish or district, and such compensation has been certified by the said commissioners (which certificate shall be registered in the registry of the diocese), all the fees or portion of fees reserved by the order in council, or otherwise belonging to the incumbent of the original parish or district during his incumbency, or to the incumbent thereof for the time being and his successors, shall, notwithstanding such reservation or claim, together with all mortuary and other ecclesiastical fees, dues, oblations, or offerings arising within such district chapelry, consolidated chapelry, or particular district, belong and be paid to the incumbent for the time being of such district chapelry, consolidated chapelry, or particular district, for his own use and benefit.

Where fees have not been re-

VI. Where the fees or any part thereof arising from the performance of the offices of the church, or any of

14 & 15 Vict. c. 97.

served, or do not otherwise belong to incumbent of original parish, all mortuary and other fees, &c. shall belong to incumbent of district chapelry, &c.

them, are not reserved or do not otherwise belong to the incumbent of the original parish or district out of which the district chapelry, consolidated chapelry, or particular district is taken, all the mortuary and other ecclesiastical fees, dues, oblations, or offerings arising within such district chapelry, consolidated chapelry, or particular district shall from and after the passing of this Act belong and be paid to the incumbent for the time being of such district chapelry, consolidated chapelry, or particular district, notwithstanding no compensation for the loss thereof has been made to the incumbent of the original parish or district.

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Commissioners may accept, for the purpose of an endowment and a repair fund, lands, &c. and money.

VIII. The exemption from the provisions of the Mortmain Acts, and the restrictions applicable to such exemption, contained in the said Act of the third and fourth years of Her Majesty, shall be applicable to any endowment or grant or conveyance for the purpose of a repair fund of any such church or building; and, subject as aforesaid, the said commissioners may accept by way of endowment, and for the purpose of a repair fund, for such church or building, such permanent provision as they may consider satisfactory, consisting of all or any of the following descriptions of property, namely, land, tithes, rent-charges, and other tenements or hereditaments, money charged on land or invested in the funds; and such endowment and repair fund shall be exclusive of and in addition to the pew rents (if any) of such church or building; and as regards any endowments to be made for the purpose of obtaining the patronage as aforesaid, the same may be vested in such trustees, not exceeding five, as the said commissioners direct; and such trusts thereof, and for the sale or conversion thereof, and re-investment of the produce

either in land or in Government securities, with powers of granting building or other leases, and all other powers for the due administration of such endowments and repair fund, and appointment of new trustees, may be declared as the said commissioners think fit. 14 & 15 Vict. c. 97.

See ss. 2 and 3 of 3 & 4 Vict. c. 60, *ante*, p. 592.

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Certain powers of Church Building Acts to apply to newly constituted parishes.

XVI. The powers and provisions of the Church Building Acts or this Act relative to the formation of any parish or district shall be applicable to the formation of any parish or district out of any new parish formed or hereafter to be constituted by or under the proceedings of the ecclesiastical commissioners.

Supplemental Order in Council for performance of baptisms, churchings, and burials.

XVII. Where a district chapelry has been already or is hereafter assigned to any church under the provisions of the Church Building Acts, and the order in council assigning such district chapelry does not direct that the offices of baptisms, churchings, and burials shall be performed in such church, or only directs that one or two of such offices should be performed therein, it shall be lawful for Her Majesty, by any supplemental order in council, on a representation to be made to Her Majesty by the said commissioners, with the consent of the bishop of the diocese, to order that all or any of the offices of baptisms, churchings, and burials, not included in such first order in council as aforesaid, shall be thereafter performed in such church, and that all the fees arising from the performance of the offices so authorised, or a part thereof, shall thereafter belong and be paid to the minister of such church, or after the next avoidance of the parish or district out of which such district chapelry is formed, or that all or a portion of such fees shall belong and be paid to the incumbent of such parish church or district; and all the laws in force relating to

14 & 15 Vict. c. 97.

the performance of such offices, and the registration thereof, shall apply to such offices as may be performed under such supplemental order in council; provided that nothing herein contained shall authorise receiving fees for baptisms.

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Provisions of 8 & 9 Vict. c. 70, as to forming a consolidated chapelry out of a parish, &c. to extend to formation of such chapelries, &c.

XIX. The provisions contained in the said Act of the eighth and ninth year of Her Majesty, chapter seventy, relative to the formation of a consolidated chapelry out of parishes or extra-parochial places the boundaries of which are contiguous to each other, . . . shall extend and apply to the formation of any consolidated chapelry out of any parishes or districts already formed or hereafter to be formed the boundaries of which are contiguous to each other.

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Church Building Acts, as to the formation of a parish or district, to apply to a parish regulated by a local Act, on application to the Church Building Commissioners by patron, incumbent, and vestry.

XXI. Whenever, under and by virtue of any local Act now in force, any parish cannot be brought within the provisions of the Church Building Acts touching the formation thereout of a parish or district, and whenever a representation is made to the said commissioners by the patron and incumbent of such parish, and by the vestry or select vestry, or persons exercising the powers of vestry in ecclesiastical matters, in such parish, that it will be for the spiritual benefit of such parish that it should be brought within such provisions, it shall be lawful for the said commissioners, if they think fit, with the consent of the bishop of the diocese, to apply and put in execution with respect to such parish the powers and provisions of the Church Building Acts and this Act relative to the formation of any parish or district, and such provisions shall thereupon be applicable to such parish, any local Act of Parliament to the con-

trary notwithstanding; provided that if the patronage of such church is vested in or exercised by the inhabitants thereof generally, or by any body or class of persons exceeding thirty in number, such application to the said commissioners shall be sufficient if signed by the incumbent of such parish and by the vestry or select vestry, or persons exercising the powers of vestry; and such vestry or select vestry, or persons exercising the powers of vestry, as aforesaid, in such parish, may meet for the purpose of considering and deciding whether it is expedient to make such representation as aforesaid to the said commissioners, and if the majority in number of those present at such meeting be in favour thereof the churchwardens of such vestry, or the chairman of such meeting, may and shall sign such representation on behalf of such vestry or meeting. 14 & 15 Vict. c. 97.

XXII. Provided, that nothing in this Act contained shall alter or affect the provisions of the Parish of Manchester Division Act, 1850. Saving of the Manchester Division Act, 1850.

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XXIV. The powers and provisions contained in an Act passed in the session holden in the sixth and seventh years of Her Majesty, chapter thirty-seven, section twenty-two, enabling persons and bodies corporate to give and grant lands, tithes, tenements, or other hereditaments for the purposes of the said Act, shall be construed and held to authorise any ecclesiastical corporation, aggregate or sole, to give or grant any land or tithes belonging to such corporation in the manner and for the purposes in the said Act mentioned: Provided always, that the power hereby given shall only be exercised with the following consents in writing; that is to say, in the case of a college, with the consent of the visitor; in the case of a bishop, with the Provisions of 6 & 7 Vict. c. 37, s. 22, to apply to an ecclesiastical corporation, aggregate or sole, with certain consents.

14 & 15 Vict. c. 97.

consent of the archbishop of the province; in the case of a dean, with the consent of the dean and chapter; in the case of a canon or prebendary, with the consent of the patron of such canonry or prebend respectively; in the case of the incumbent of a benefice, with the consents of the bishop of the diocese and the patron of such benefice; and that the provisions of an Act passed in the session holden in the first and second years of Her Majesty, chapter one hundred and six, respecting the party or parties to be deemed patron or patrons, and also respecting the manner in which and the party by whom any such consent is to be given, shall be held to apply to the consents hereby required.

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Apportionment or release of quit rents, &c.

XXVII. When any rent or other annual or recurring charge shall be payable out of any hereditaments a part whereof is hereafter acquired under any of the provisions contained in the Church Building Acts, it shall be lawful for the persons or bodies giving or selling the said hereditaments, or for the said commissioners, if they take the said lands under the powers of the Church Building Acts, but in either case with the consent in writing of the person in the actual and lawful receipt of such rent or annual or recurring charge at the time of its apportionment, to apportion the said rent or charge in such manner as the said commissioners see fit, and to charge one part thereof on the hereditaments to be conveyed to the said commissioners, and the other part thereof on the remainder of the hereditaments charged therewith; and the several portions of the said rent or charge so apportioned which may be charged on the hereditaments so conveyed to the said commissioners and the remainder of the hereditaments originally

charged respectively shall in all respects, as far as circumstances will admit, be recoverable from or out of the hereditaments so conveyed and the remainder of the hereditaments originally charged respectively, in the same manner as the original rent or charge was recoverable from or out of the whole of the said hereditaments or any part thereof; but if the part of the hereditaments so charged which is not acquired under the provisions contained in any of the Church Building Acts be, in the opinion of the said commissioners and of the body or person having power under the said Acts or otherwise to sell or give the other part of the said hereditaments to said commissioners, of ample value to bear the whole of the said rent or charge, then such part of the hereditaments as may be conveyed to the said commissioners may be conveyed free from such rent or charge, and the remainder of the hereditaments shall continue liable to the whole thereof, in the same manner as the whole of the hereditaments were originally liable, and the said commissioners are hereby authorised to do all acts necessary for giving full effect to such apportionment or discharge and charge. 14 & 15 Vict. c. 97.

XXVIII. The freehold of any chapel already or to be hereafter built under the provisions of the said Act of the ninth and tenth years of Her Majesty, chapter sixty-eight, as a chapel for the burial service, when such chapel has been consecrated, and the freehold of any lodge, walks, or gates already or hereafter erected or made under such Act on any part of such burial ground as aforesaid, shall vest in the bishop of the diocese for the time being in which the same is situate; and the preservation and custody thereof shall belong to the trustees for the time being of the repair fund, appointed under the provisions of the said last-mentioned Act, Freehold of chapel, lodge, &c. erected under the provisions of 9 & 10 Vict. c. 68, shall vest in the bishop of the diocese.

14 & 15 Vict. c. 97.

who shall have power to make such orders and regulations from time to time as may to them in that behalf seem proper.

Interpretation of terms.

XXIX. In the construction and for the purposes of this Act, unless there be something in the subject or context repugnant to or inconsistent with such construction, the word "church" shall mean and include any consecrated church or chapel belonging to the Church of England; the word "bishop" shall be construed to comprehend archbishop, and the word "diocese" shall be construed to comprehend all places to which the jurisdiction of any bishop extends under and for the purposes of an Act passed in the second year of her present Majesty, chapter one hundred and six; the word "tithes" shall mean and include all commuted or uncommuted tithes, rent-charges in lieu of tithe, portions and parcels of tithes, and all moduses, compositions real and prescriptive, and customary payments; the words "Church Building Acts" shall mean and include all or any of the Acts mentioned in the preamble of this Act; the words "parish or district" or "new parish or district" shall mean and include any distinct and separate parish, district parish, district chapelry, consolidated chapelry, or particular district already or hereafter formed under the provisions of the Church Building Acts; the word "churchwarden" shall mean and include churchwarden and chapelwarden; and the words "body or person" shall mean and include any body politic, corporate, or collegiate, or any corporation aggregate or sole, as well as one individual.

Extent of this Act.

XXX. This Act shall extend only to that part of the United Kingdom called England and Wales, and to the Isle of Man, and to the Islands of Guernsey, Jersey, Alderney, and Sark.

This Act is to be construed as not extending to the Isle of Man (60 & 61 Vict. c. 33). 14 & 15 Vict. c. 97.

Besides the Acts set out here there are two other Church Building Acts, viz., 17 & 18 Vict. c. 32, which provides for the apportionment of rent when parts of land in lease are taken for the purposes of the Church Building Acts, and 19 & 20 Vict. c. 55, which provides for the transfer to the Ecclesiastical Commissioners of the powers of the Church Building Commissioners.

Two Acts, 32 & 33 Vict. c. 94, set out *infra*, p. 673, and 47 & 48 Vict. c. 65, set out *infra*, p. 679, are also by the Short Titles Act, 1896, grouped as Church Building Acts.

GIFTS FOR CHURCHES ACTS.

THE GIFTS FOR CHURCHES ACT, 1803.

43 Geo. III. c. 108.

43 GEO. III. c. 108.

An Act to promote the building, repairing, or otherwise providing of Churches and Chapels, and of Houses for the Residence of Ministers, and the providing of Churchyards and Glebes. [27th July, 1803.]

WHEREAS a sufficient number of churches and chapels for the celebration of divine service, according to the rites and ceremonies of the united Church of England and Ireland, and of mansion houses with competent glebes for the residence of ministers officiating in such churches and chapels, is necessary towards the promotion of religion and morality: And whereas the same are either wholly wanting or materially deficient in many parts of England and Ireland: And whereas many well-disposed persons would be desirous of contributing towards the supply of such defects, if they were enabled so to do in the manner hereinafter directed: May it therefore please Your Majesty that it may be enacted; and be it enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, that all and every person and persons

Persons by deed or

having in his or their own right any estate or interest in possession, reversion, or contingency, of or in any lands or tenements, or of any property of or in any goods or chattels, shall have full power, license, and authority, at his and their will and pleasure, by deed enrolled in such manner, and within such time, as is directed in England by the statute made in the twenty-seventh year of the reign of King Henry the Eighth, and in Ireland by the statute made in the tenth year of the reign of King Charles the First, for enrolment of bargains and sales, or by his, her, or their last will or testament in writing duly executed according to law, such deed, or such will or testament, being duly executed three calendar months at least before the death of such grantor or testator, including the days of the execution and death, to give and grant to and vest in any person or persons, or body politic or corporate, and their heirs and successors respectively, all such his, her, or their estate, interest, or property in such lands or tenements, not exceeding five acres, or goods and chattels, or any part or parts thereof, not exceeding in value five hundred pounds, for or towards the erecting, rebuilding, repairing, purchasing, or providing any church or chapel where the liturgy and rites of the said united Church are or shall be used or observed, or any mansion house for the residence of any minister of the said united Church officiating, or to officiate in any such church or chapel, or of any out-buildings, offices, churchyard, or glebe, for the same respectively, and to be for those purposes applied, according to the will of the said benefactor in and by such deed enrolled, or by such will or testament executed as aforesaid expressed, the consent and approbation of the ordinary being first obtained, and in default of such direction, limitation, or appointment, in

will may give lands not exceeding five acres, or goods and chattels not exceeding 500*l.*, for the purposes of this Act.

43 Geo. III. c. 108.

such manner as shall be directed and appointed by the patron and ordinary, with the consent and approbation of the parson, vicar, or other incumbent; and such person and persons, bodies politic and corporate, and their heirs and successors respectively, shall have full capacity and ability to purchase, receive, take, hold, and enjoy, for the purposes aforesaid, as well as from such persons as shall be so charitably disposed to give the same, as from all other persons as shall be willing to sell or aliene to such person or persons, bodies politic or corporate, any lands or tenements, goods, or chattels, without any license or writ of *Ad quod damnum*, the Statute of Mortmain, or any other statute or law to the contrary notwithstanding: Provided always, that this Act or anything therein contained, shall not extend to enable any person or persons being within age, or of non-sane memory, nor women covert without their husbands, to make any such gift, grant, or alienation; anything in this Act contained to the contrary in anywise notwithstanding.

But such powers not to extend to persons within age, insane, or femes covert.

By the Short Titles Act, 1896, this Act may be cited as the Gifts for Churches Act, 1803.

This Act was passed as a relaxation of 9 Geo. II. c. 36. The law as to alienation in mortmain is now contained in the Mortmain and Charitable Uses Act, 1888 (51 & 52 Vict. c. 42), as amended by 54 & 55 Vict. c. 73, and 55 & 56 Vict. c. 11.

It has been held under this Act that a gift for the endowment of a future church was not void under 9 Geo. II. c. 36, and that where pure and impure personalty was given to trustees to erect or endow a church they were entitled, by virtue of this Act, to 500*l.* out of the impure personalty, in addition to the whole of the pure personalty (*Sinnett* v. *Herbert*, [1872] L. R. 7 Ch. 232; 41 L. J. Ch. 388; 26 L. T. N. S. 7; 20 W. R. 270, *varying* L. R. 12 Eq. 201; 40 L. J. Ch. 509; 24 L. T. N. S. 778; 19 W. R. 946).

43 Geo. III. c. 108.

A bequest to a diocesan building society towards building and endowing a church, but without referring to an existing site or expressly excluding the acquisition of land, was held bad under 9 Geo. II. c. 36 except as to 500*l.*, which was admitted to be legally bequeathed under this Act (*In re Lee's Trusts*, [1873] 27 L. T. N. S. 808; 21 W. R. 168).

A testatrix bequeathed 2,000*l.* to trustees to pay the same to the vicar of M., to be disposed of at his discretion in or about restoring, altering, and enlarging and improving the church, parsonage house, and school of M. *Held* that the church being situate on land already in mortmain, there must be an inquiry to ascertain whether the parsonage house and school were also so situate, and what sums would be required for restoring, &c. such of the objects of the legacy as were so situate, and to the extent of these sums the legacy was good; also following *Sinnett* v. *Herbert*, *supra*, that the amount of the legacy required for objects in mortmain must be apportioned between the pure and impure personalty, and be paid out of pure personalty to the extent of its proportion, and under this Act to the extent of 500*l.* out of impure personalty (*Champney* v. *Davy*, [1879] 11 Ch. D. 949; 48 L. J. Ch. 268; 40 L. T. N. S. 189; 27 W. R. 390).

A testator by his will executed three months before his death, devised all his real estate, which included a piece of land about one acre with an unconsecrated building thereon licensed by the bishop for public worship, to his wife absolutely. The devise was in pursuance of a secret agreement whereby the wife undertook to hold the land upon trust to convey the same for a parish church in perpetuity. *Held* that the devise was legal under this Act (*O'Brien* v. *Tyssen*, [1884] 28 Ch. D. 372; 54 L. J. Ch. 284; 51 L. T. N. S. 814; 33 W. R. 428).

A gift of 200*l.* for a new church clock has been held to be within this section, but not a gift for a choir fund (*In re Hendy*, *Watson* v. *Blakeney*, [1887] 56 L. T. N. S. 908; 35 W. R. 730).

The proviso at the end of the section is not affected by the Married Woman's Property Act, 1882. Consequently, a gift by a married woman made by will executed three months before death, for the erection of a new church, was held

43 Geo. III. c. 108.

invalid (*In re Smith's Estate, Clements* v. *Ward*, [1887] 35 Ch. D. 589; 56 L. J. Ch. 726; 56 L. T. N. S. 850; 35 W. R. 514; 51 J. P. 692).

A testator bequeathed 500*l.* on trust to invest and to apply such part of the income as might be necessary in keeping in repair a family vault, and to apply the residue of the income in keeping in repair a tomb and the churchyard in which the vault and tomb were situated. *Held* that the trust to keep the vault in repair was void, and that the portion of the fund devoted to that purpose fell into residue; that the residuary gift was void so far as it related to keeping the tomb in repair, but by virtue of this Act was valid in so far as it related to keeping the churchyard in repair; and that the void portion of the 500*l.* was to be ascertained by calculating what sum, when invested in Consols, would produce sufficient income to keep the tomb in repair (*In re Vaughan, Vaughan* v. *Thomas*, [1886] 33 Ch. D. 187; 55 L. T. N. S. 547; 35 W. R. 104; 51 J. P. 70).

Only one such gift shall be made by one person, and where it exceeds five acres or 500*l.* the Chancellor may reduce it.

II. Provided also, and it is hereby further enacted, that no more than one such gift or devise shall be made by any one person, and that if any such gift or devise as aforesaid shall happen to exceed five acres in lands or tenements, or the value of five hundred pounds in goods and chattels, every such gift or devise shall be good and valid to the extent aforesaid; and it shall be lawful for the Lord Chancellor for the time being, on petition, to make order for reducing every such gift or devise to and within the said limits, and for allotting such specific five acres, and if occasion should require, such specific goods and chattels as in his judgment shall be most convenient, and to make such further order touching the premises as to him shall appear just and reasonable.

No glebe upwards of fifty acres shall be augmented with more than one acre.

III. Provided also, that no glebe containing upwards of fifty acres, shall be augmented with more than one acre under or by virtue of this Act, but that the excess, if any given or devised for the purpose of such augmentation, shall be reduced in manner aforesaid, by the said

Lord Chancellor, and such order thereupon shall be by him made as hereinbefore is directed in the case of an excess beyond five acres. 43 Geo. III. c. 108.

IV. And whereas it often happens that small plots of land held in mortmain lie convenient to be annexed to some such church or chapel, or house of residence, as aforesaid, or to some churchyard, or curtilage thereto belonging, or convenient to be employed as the site of some such church or chapel, or house to be hereafter erected, and for the necessary and commodious use and enjoyment thereof, and that they might be so employed to the advantage of the public, and without detriment to the proprietors thereof, if they were enabled to give and grant the same for the purposes aforesaid; be it therefore further enacted, that it shall be lawful for every body politic or corporate, sole or aggregate, by deed enrolled as aforesaid, with or without confirmation, as the law may require, to give and grant, either by way of exchange or benefaction, any such small plot of land not exceeding one acre, to any person or persons, body politic or corporate, his and their heirs and successors respectively, to be held, used, and applied for the purposes aforesaid; and such last mentioned person and persons, bodies politic and corporate, and their heirs and successors respectively, shall have full capacity and ability, with consent of the incumbent, patron, and ordinary, to take, hold, and enjoy such small plot of land for the purposes aforesaid, without any license or writ of *Ad quod damnum*, the Statute of Mortmain, or any other Act or law to the contrary notwithstanding.

Plots of land not exceeding one acre held in mortmain, lying convenient to be annexed to some church, &c. may be granted either by exchange or benefaction for that purpose.

V. Provided also, and it is hereby further enacted and declared, that in every parochial church or chapel hereafter to be erected ample provision shall be made for the decent and suitable accommodation of all per-

Accommodation to be provided for persons resorting to church, &c.

43 Geo. III. c. 108.

sons, of what rank or degree soever, who may be entitled to resort to the same, and whose circumstances may render them unable to pay for such accommodations.

Rights of giving or devising not affected.

VI. Provided also, that nothing in this Act contained shall be construed to take away or abridge any right of giving or devising which already exists in any person whatsoever.

THE BURIAL GROUND ACT, 1816.

56 Geo. III. c. 141.

56 GEO. III. c. 141.

An Act for enabling Ecclesiastical Corporate Bodies under certain circumstances to alienate Lands for enlarging Cemeteries or Churchyards. [2nd July, 1816.]

* * * * * *

The preamble was repealed by the Statute Law Revision Act (No. 2), 1890.

By the Short Titles Act, 1896, this Act may be cited as the Burial Ground Act, 1816.

Ecclesiastical corporations may sell portions of land adjoining cemeteries for enlarging thereof.

1. It shall and may be lawful for any spiritual or ecclesiastical body corporate or spiritual person, being a corporation sole possessing any land adjacent to any cemetery, churchyard, or burying ground, to sell by indenture of bargain and sale enrolled in the High Court of Chancery within six calendar months for the purpose of consecration, such portion thereof as may be deemed necessary for enlarging any such cemetery, churchyard, or burying ground not exceeding one acre.

With certain consents.

2. Provided always that in case of any spiritual person being a corporation sole, the consent of the lord bishop of the diocese or ordinary and of the patron of the living held by such corporation sole shall be,

testified by their being parties to the alienation of the said land; and that previously thereto the value of such land shall be ascertained, and together with a description thereof, be committed to writing by some competent person to be named and appointed by the ordinary, which person so appointed shall verify the same on oath before some one of His Majesty's justices of the peace for the county, town, or district in which such land is situated, which oath the said justice is hereby empowered to administer; and in case the value shall appear to exceed one hundred pounds, that other lands of at least an equal value estimated and verified in manner aforesaid, shall be well and legally conveyed to and for the same uses as the lands conveyed by the said spiritual persons or corporations sole, and as the consideration thereof, and in case the value shall appear not to amount to one hundred pounds but shall exceed twenty pounds, such value shall be paid to the governors of the bounty of Queen Anne for the augmentation of the maintenance of the poor clergy; to be by them used and applied for the benefit of such spiritual person or corporation sole, in the same manner as they are now empowered by law to use and apply other sums of money coming into their hands; and in case the value shall not amount to twenty pounds, the said value shall be paid in money to such spiritual person or corporation sole, to be by him applied at his own discretion.

56 Geo. III. c. 141.

Value of the land to be ascertained.

If above 100*l.* other lands to be conveyed in exchange.

Application of the purchase money if under that value.

3. Provided always, that no alienation made by virtue of this Act shall be questioned after the expiration of twenty years from the time of such alienation on account of any want of compliance with the forms prescribed by this Act.

Limit of time within which alienations may be questioned.

4. All ground which has been or shall be consecrated as burial ground shall, after twenty years from

Burial ground to be dis-

56 Geo. III. c. 141.

charged of adverse titles, &c. after twenty years from the consecration thereof.

Vesting thereof.

the time of such consecration, be considered as discharged from all adverse titles, claims, and demands whatsoever, and as absolutely vested in the trustee or trustees, if any, thereof; and if there should not be any such trustee or trustees, then in the vicar or perpetual curate, if any, for the time being; and if there should not be any vicar or perpetual curate, then in the rector for the time being of each parish in which such burial ground is or shall be situate.

PLACES OF WORSHIP SITES ACT, 1873.

36 & 37 VICT. C. 50.

36 & 37 Vict. c. 50.

An Act to afford further facilities for the Conveyance of Land for Sites for Places of Religious Worship and for Burial Places. [21st July, 1873.]

WHEREAS it is expedient to afford greater facilities for granting sites for buildings for religious worship and for burial places in England and Wales:

Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Landlords empowered to convey land to be used as sites for places of worship and residence of the minister.

1. Any person or persons being seised or entitled in fee simple, fee tail, or for life or lives of or to any manor or lands of freehold tenure, and having the beneficial interest therein, and being in possession for the time being, may grant, convey, or enfranchise by way of gift, sale, or exchange in fee simple, or for any term of years, any quantity not exceeding one acre of such land, not being part of a demesne or pleasure ground attached to any mansion house, as a site for a church, chapel, meeting house, or other place of divine worship, or for the residence of a minister officiating in such place of worship or in any place of worship within one mile of

36 & 37 Vict. c. 50.

such site, or for a burial place, or any number of such sites, provided that each such site does not exceed the extent of one acre: Provided also, that no such grant, conveyance, or enfranchisement made by any person seised or entitled only for life or lives of or to any such manor or lands shall be valid unless the person next entitled to the same for a beneficial interest in remainder in fee simple or fee tail (if legally competent) shall be a party to and join in the same, or if such person be a minor, or married woman, or lunatic, unless the guardian, husband, or committee of such person respectively shall in like manner concur: Provided also, that in case the said land so granted, conveyed, or enfranchised as aforesaid, or any part thereof, shall at any time be used for any purpose other than as a site for such place of worship or residence, or burial place, or, in the case of a place of worship or residence, shall cease for a year at one time to be used as such place of worship or residence, the same shall thereupon revert to and become a portion of the lands from which the same was severed, as fully to all intents and purposes as if this Act had not been passed, anything herein contained to the contrary notwithstanding. The provisions hereinbefore contained with respect to any manor or lands of freehold tenure shall apply to lands of copyhold or customary tenure, but so, nevertheless, that the provisions of "The Lands Clauses Consolidation Act, 1845," with respect to copyhold lands (being sections 95, 96, 97, and 98 of such Act) shall for the purposes of this enactment be incorporated with this Act.

If lands cease to be used for the purposes of the Act, then to revert.

The Lands Clauses Act, 1845, is set out *infra*, p. 721.

It has been held that a father who was tenant for life of a settled estate could, as guardian by nature of his infant son who was entitled to the inheritance in remainder, concur on his son's behalf in a grant by himself of part of the settled

estate as a site for a church under this Act (*In re Marquis of Salisbury and The Ecclesiastical Commissioners*, [1875] 2 Ch. D. 29; 45 L. J. Ch. 250; 34 L. T. N. S. 5).

As to payment of purchase money, &c.

2. The purchase money or enfranchisement money or money to be received for equality of exchange on any such sale, enfranchisement, or exchange shall, if such sale, enfranchisement, or exchange be made by any person or persons seised or entitled in fee simple or fee tail, be paid to the person or persons making such sale, enfranchisement, or exchange, but if such sale, enfranchisement, or exchange be made by any person or persons seised or entitled for life or lives only, then such purchase money, or enfranchisement money, or money to be received for equality of exchange, shall be paid to the existing trustees or trustee (if any) of the instrument under which such person or persons is or are so seised or entitled, to be held by them upon the trusts upon which the land conveyed for such site was held, or if there be no such existing trustees or trustee to two or more trustees to be nominated in writing by the person or persons making such sale, enfranchisement, or exchange; and the receipt of any person or persons to whom such money is hereby directed to be paid shall effectually discharge the person or persons paying such purchase or enfranchisement money or money for equality of exchange therefrom, and from all liability in respect of the application thereof; and the trustees so to be nominated as aforesaid shall invest such purchase or enfranchisement money or money to be received for equality of exchange in the purchase of other lands or hereditaments to be settled to the same uses and trusts as the land conveyed for such site should have stood limited to; and until such investment, such purchase or enfranchisement money or money to be received for

36 & 37 Vict. c. 50.

equality of exchange shall be invested upon such securities or investments as would for the time being be authorised by statute or by the Court of Chancery, and for the purposes of devolution and enjoyment shall be treated as land subject to the same uses and trusts as the land conveyed for such site should have stood limited to.

Persons under disability empowered to convey lands for the purposes of the Act.

3. Where any person or persons is or are equitably entitled to any manor or lands, but the legal estate therein shall be in some trustee or trustees, it shall be sufficient for such person or persons to convey or otherwise assure the same for the purposes of this Act without the trustee or trustees being party or parties to the conveyance or other assurance thereof, and where any married woman shall be seised or possessed of or entitled to any estate or interest, manorial or otherwise, in land proposed to be conveyed or otherwise assured for the purposes of this Act, she and her husband may convey, or otherwise assure the same, for such purposes by deed without any acknowledgment thereof; and where it is deemed expedient to purchase any land for the purposes aforesaid belonging to or vested in any infant or lunatic, such land may be conveyed or otherwise assured by the guardian of such infant or the committee of such lunatic respectively, who may receive the purchase money for the same, and give valid and sufficient discharges to the party paying such purchase money, who shall not be required to see to the application thereof; and in every such case respectively the legal estate shall, by such conveyance or other assurance, vest in the trustees of such place of worship or residence; and if any land taken under this Act be subject to any rent, and part only of the land subject to any such rent be required to be taken for the purposes of this Act, the apportionment of such rent may be

settled by agreement between the owner of such rent and the person or persons to whom the land is conveyed; and if such apportionment be not so settled by agreement, then the same shall be settled by two justices as provided in "The Lands Clauses Consolidation Act, 1845," section 119: Provided nevertheless, that nothing herein contained shall prejudice or affect the right of any person or persons entitled to any charge or incumbrance on such land. 36 & 37 Vict. c. 50.

4. All gifts, grants, conveyances, assurances, and leases of any site for a place of worship, or the residence of a minister, under the provisions of this Act, in respect of any land, messuages, or buildings, may be made according to the form following, or as near thereto as the circumstances of the case will admit; (that is to say,) Form of grants, &c.

"I [*or* We] under the authority of an Act passed in the thirty-sixth and thirty-seventh years of Her Majesty Queen Victoria, intituled 'An Act to afford further facilities for the conveyance of land for sites for places of religious worship and for burial places,' do hereby freely and voluntarily, and without any valuable consideration, [*or*, do, in the consideration of the sum of pounds to me or the said paid] grant [alienate] and convey [*or* lease] to *A.B.* all [*description of the premises*], and all [my *or* our *or* the right, title, and interest of the] to and in the same and every part thereof, to hold unto and to the use of the said and his or their heirs, or executors, or administrators, or successors, for the purposes of the said Act, and to be applied as a site for a place of worship, or for a residence for a minister or ministers officiating in , or for a burial place, and for no other purposes whatever. [*In case the site be conveyed*

36 & 37 Vict. c. 50.

to trustees, a clause providing for the removal of the trustees, and in cases where the land is purchased, exchanged, or demised, usual covenants or obligations for title may be added.]

"In witness whereof, the conveying and other parties have hereunto set their hands and seals, the day of .

"Signed, sealed, and delivered by the said in the presence of of ."

One witness to the execution of the document by each party shall be sufficient, and any assurance under this Act shall be and continue valid if otherwise lawful, although the donor or grantor shall die within twelve calendar months from the execution thereof.

Ecclesiastical Commissioners may accept trusts.

5. The persons hereinbefore specified may convey by way of gift, sale, or exchange, any site or sites, not exceeding in the case of any one site the quantity aforesaid, for any of the purposes of the Church Building Acts, to the ecclesiastical commissioners for England, or as such commissioners may direct, and such commissioners may also act as trustees for the purpose of taking and holding any sites granted under this Act; and all conveyances made under this present enactment shall be deemed to be made under the Church Building Acts, and the land conveyed shall vest in conformity with such conveyances and the Church Building Acts.

Extent of Act.

6. The provisions of this Act shall not extend to Scotland or Ireland.

Short title.

7. This Act may be cited as "The Places of Worship Sites Act, 1873."

PLACES OF WORSHIP SITES AMENDMENT ACT, 1882.

45 & 46 VICT. C. 21.

45 & 46 Vict. c. 21.

An Act to amend the Places of Worship Sites Act, 1873.

[12th July, 1882.]

WHEREAS by the Places of Worship Sites Act, 1873, facilities are afforded for the conveyance of pieces of land not exceeding in quantity one acre for sites for places of religious worship and for burial places, but doubts have been entertained whether conveyances can be made under that Act by corporations and public bodies, and it is expedient to remove such doubts: 36 & 37 Vict. c. 50.

And whereas cases have arisen in which tenants for life are unable to make conveyances under the said Act by reason that the person next entitled to the manor or lands for a beneficial interest in fee simple or fee tail is unborn or unascertained; and it is expedient to grant increased facilities for making such conveyances:

Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. The Places of Worship Sites Act, 1873, shall be construed as extending to authorise any corporation, ecclesiastical or lay, whether sole or aggregate, and any officers, justices of the peace, trustees, or commissioners holding land for public, ecclesiastical, parochial, charitable, or other purposes or objects, to grant, Conveyance of lands by corporations and other public bodies.

45 & 46 Vict. c. 21.

convey, or enfranchise for the purposes of the Act such quantity of land as therein mentioned: Provided as follows:

(*a.*) An ecclesiastical corporation sole, being below the dignity of a bishop, shall not make any such grant without the consent in writing of the bishop of the diocese to whose jurisdiction he is subject:

(*b.*) A municipal corporation shall not make any such grant without the consent in writing of the commissioners of Her Majesty's treasury:

(*c.*) Parochial property shall not be so granted without the consent of a majority of the ratepayers and owners of property in the parish to which the property belongs, assembled at a meeting to be convened according to the mode pointed out in the Act of the session held in the fifth and sixth years of the reign of King William the Fourth, chapter 69, intituled "An Act to facilitate the conveyance of workhouses and other property of parishes, and of incorporations or unions of parishes in England and Wales," and of the Local Government Board and of the guardians of the poor of the parish or of the union comprising the parish, testified by their being parties to the conveyance:

5 & 6 Will IV. c. 69.

(*d.*) Property held on trust for charitable purposes shall not be so granted without the consent of the Charity Commissioners for England and Wales.

Power for limited owner in case of unborn or unascertained remainderman to convey, &c.

2. The said Act shall be construed as extending to authorise any person seised or entitled only for life or lives of or to any manor or lands of freehold tenure to make such grant, conveyance, or enfranchisement as is mentioned in the said Act in cases where the person next entitled to the same for a beneficial interest in remainder in fee simple or fee tail is unborn or unascer-

tained: Provided that no such grant, conveyance, or enfranchisement made by any such person seised only for a life or lives shall be valid unless the person seised or entitled for a beneficial interest for life or lives, or for an estate in fee simple or fee tail (as the case may be) in remainder immediately expectant on the estate of such unborn or unascertained person of or to such manor or lands (if any, and if legally competent) shall be a party to and shall join in the same; and if there be no such person, or if such person be not legally competent, unless the trustees or trustee (if any) of such manor or lands during the suspense or contingency of the then immediate or expectant estate in fee simple or fee tail in such manor or lands shall in like manner concur. 45 & 46 Vict. c. 21.

3. This Act may be cited as the Places of Worship Sites Amendment Act, 1882. Short title.

NEW PARISHES ACTS.

NEW PARISHES ACT, 1843.

6 & 7 Vict. c. 37.

6 & 7 VICT. C. 37.

An Act to make better Provision for the Spiritual Care of populous Parishes (*a*). [28th July, 1843]

By the Short Titles Act, 1896, it may be cited as the New Parishes Act, 1843, and by the same Act the group of Acts may be referred to as the New Parishes Acts, 1843 to 1884.

* * * * * *

Districts may be constituted for spiritual purposes;

IX. And whereas there are divers parishes, chapelries, and districts of great extent, and containing a large population, wherein or in parts whereof the provision for public worship and for pastoral superintendence is insufficient for the spiritual wants of the inhabitants thereof; be it therefore enacted, that if at any time it shall be made to appear to the said ecclesiastical commissioners, that it would promote the interests of religion that any part or parts of any such parish or parishes, chapelry or chapelries, district or districts, or any extra-parochial place or places, or any part or parts thereof, should be constituted a separate district for spiritual purposes, it shall be lawful, by the authority aforesaid, with the consent of the bishop of the diocese under his hand and seal, to set out by metes and

(*a*) This Act is often referred to as "Peel's Act."

bounds, and constitute a separate district accordingly, such district not then containing within its limits any consecrated church or chapel in use for the purposes of divine worship, and to fix and declare the name of such district: Provided always, that the draft of any scheme for constituting any such district, proposed to be laid before Her Majesty in council by the said commissioners, shall be delivered or transmitted to the incumbent and to the patron or patrons of the church or chapel of any parish, chapelry, or district out of which it is recommended that any such district or any part thereof should be taken, in order that such incumbent, patron or patrons, may have an opportunity of offering or making, to the said commissioners or to such bishop, any observations or objections upon or to the constituting of such district; and that such scheme shall not be laid before Her Majesty in council, until after the expiration of one calendar month next after such copy shall have been so delivered or transmitted, unless such incumbent and patron or patrons shall in the meantime consent to the same: Provided also, that in every scheme for constituting any such district, the said commissioners shall recommend to Her Majesty in council, that the minister of such district, when duly licensed as hereinafter mentioned, shall be permanently endowed, under the provisions hereinafter contained, to an amount of not less than the annual value of one hundred pounds; and also, if such endowment be of less than the annual value of one hundred and fifty pounds, that the same shall be increased under the like provisions to such last-mentioned amount, at the least, so soon as such district shall have become a new parish as hereinafter provided.

6 & 7 Vict. c. 37.

and are to be endowed to a certain amount at the least.

As to the sexton's right, under this section, to fees in respect

6 & 7 Vict. c. 37.

of burials, see *White* v. *Norwood Burial Board*, set out *ante*, pp. 205, 206.

Map of district to be annexed to scheme, and registered.

X. A map or plan, setting forth and describing such metes and bounds, shall be annexed to the scheme for constituting such district, and transmitted therewith to Her Majesty in council, and a copy thereof shall be registered by the registrar of the diocese, together with any order issued by Her Majesty in council for ratifying such scheme: Provided always, that it shall not be necessary to publish any such map or plan in the *London Gazette*.

Minister to be nominated and licensed to district.

XI. Upon any such district being so constituted, a minister may and shall be nominated thereto in manner hereinafter provided, and may thereupon be licensed thereto by the bishop, and shall have power to perform and shall perform within such district all such pastoral duties appertaining to the office of a minister according to the rites and usages of the united Church of England and Ireland as shall be specified and set forth in his license, and, when a building shall be licensed within such district for Divine worship in manner hereinafter provided, shall also perform such services and offices as shall be specified and set forth in the same or any further license granted in that behalf by the bishop of the diocese; and such minister shall perform such pastoral duties, services, and offices respectively, independently of the incumbent or minister of the church of any parish, chapelry, or district out of which such new district or any part thereof shall have been taken, and shall, so far as the performance of the same may be authorised by such license or licenses, have the cure of souls in and over such new district: Provided always, that no burials shall be performed in such licensed building, and that

nothing in this Act contained shall empower such bishop to include in any such license the solemnisation of marriages. 6 & 7 Vict. c. 37.

XII. Such minister shall be styled "The minister of the district of ," according to the name thereof so fixed as aforesaid, and shall be in all respects subject to the jurisdiction of the bishop and archdeacon within whose diocese and archdeaconry such district shall be situate, and shall only be removeable from his office of such minister for the like reasons and in the same manner as any perpetual curate is now by law removeable; and such minister shall be a body politic and corporate, and shall have perpetual succession, as well by the name and in the character aforesaid, as by the name and in the character of perpetual curate hereinafter mentioned and provided, as the case may be; and such minister and perpetual curate respectively may, in such name and character respectively, notwithstanding the Statutes of Mortmain, receive and take, to him and his successors, as well every grant of endowment or augmentation made or granted by the authority aforesaid, as also any real or personal estate or effects whatsoever which any person or persons or body corporate may give or grant to him according to law. Style and character of minister; and power to hold endowments.

XIII. It shall be lawful for the bishop of the diocese, at any time after the constituting of any such district as aforesaid, to license any building, within such district, which he may consider to be fit and proper for such purpose, for the performance of Divine service by such minister according to the rites and usages of such united Church; and such minister may for any churchings performed under any such license receive such fees as shall be fixed and determined in Bishop may license a temporary place of worship.

6 & 7 Vict. c. 37.

manner hereinafter provided; and all laws now in force relating to the registration of baptisms shall apply to all baptisms performed under any such license.

Not to prevent marriages and burials in mother church, nor affect certain other rights.

XIV. Provided always, that until a church or chapel shall have been built or acquired within such district, and shall have been approved and consecrated as hereinafter provided, nothing herein contained shall prejudice or affect the right of any incumbent of any other church or chapel, who before the constituting of such district possessed the entire cure of souls within the same or any part thereof, to publish any banns, solemnise any marriages, or perform any burials in his own church or chapel which he could have published, solemnised, or performed therein, or to receive any fees, dues, or emoluments (except the fees hereinbefore authorised to be received by the minister of such district) which as such incumbent he could have received if such district had not been constituted, nor any right to attend Divine service in any other church or chapel, which any inhabitant of such district possessed before such district was constituted.

District to become a new parish upon a church being consecrated.

XV. When any church or chapel shall be built, purchased, or acquired in any district constituted as aforesaid, and shall have been approved by the said commissioners, by an instrument in writing under their common seal, and consecrated as the church or chapel of such district, for the use and service of the minister and inhabitants thereof, such district shall, from and after the consecration of such church or chapel, be and be deemed to be a new parish for ecclesiastical purposes, and shall be known as such by the name of "the new parish of ," instead of "the district of ," according to the name so as aforesaid fixed for such district; and such church or chapel shall become and

be the church of such new parish accordingly; and any license granted by the bishop, licensing any building for Divine worship as aforesaid, shall thereupon become void; and it shall be lawful to publish banns of matrimony in such church, and according to the laws and canons in force in this realm to solemnise therein marriages, baptisms, churchings, and burials, and to require and receive such fees upon the solemnisation of such offices or any of them as shall be fixed by the chancellor of the diocese in which such new parish shall be situate, and which fees, and also the fees for churchings to be received as aforesaid by the minister of such district, such chancellor is hereby empowered and required to fix accordingly; and the like Easter offerings and dues may be received within the limits of such new parish by the perpetual curate thereof as are and were, at and before the time of the passing of this Act, payable to the incumbent of the church of the principal parish of which such new parish originally formed a part; and the several laws, statutes, and customs in force relating to the publication of banns of matrimony, and to the performance of marriages, baptisms, churchings, and burials, and the registering thereof respectively, and to the suing for and recovering of fees, oblations, or offerings in respect thereof, shall apply to the church of such new parish, and to the perpetual curate thereof for the time being: Provided always, that it shall not be lawful for any such minister or perpetual curate to receive any fee for the performance of any baptism, within his district or new parish as the case may be, or for the registration thereof. 6 & 7 Vict. c. 37.

XVI. Upon any such district so becoming a new parish, the minister of such district, having been duly Minister to become perpetual

6 & 7 Vict. c. 37. licensed, shall, without any further process or form in law, become and be perpetual curate of such new parish and of the church thereof, and shall have exclusive cure of souls in and over such parish; and shall be a body politic and corporate, and have perpetual succession; and that such parish and church shall be and be deemed to be a perpetual curacy, and a benefice with cure of souls, to all intents and purposes.

curate of new parish.

Church-wardens to be chosen.

XVII. In every such case of a district so becoming a new parish two fit and proper persons, being members of the *united* Church of England and Ireland, shall, within twenty-one days from the consecration of the church thereof, be chosen churchwardens for such new parish, one being chosen by the perpetual curate thereof, and the other by the inhabitants, residing therein and having a similar qualification to that which would entitle inhabitants to vote at the election of churchwardens for the principal parish as aforesaid, or the majority of such inhabitants, and such election shall take place at a meeting to be summoned in such manner in all respects as such perpetual curate shall direct; and such persons shall continue such churchwardens until the next usual period of appointing parish officers following their appointment; and at the like time in every year two such persons shall thenceforward be chosen by the perpetual curate for the time being and inhabitants assembled as aforesaid; and every person so chosen as aforesaid shall be duly admitted, and shall do all things pertaining to the office of churchwarden as to ecclesiastical matters in the said new parish: Provided always, that nothing herein contained shall render any such churchwardens liable or competent to perform the duties of overseer of the poor in respect of such their office of churchwardens.

XVIII. Provided always, that, until Parliament shall otherwise determine, nothing herein contained shall be construed to affect or alter any rights, privileges, or liabilities whatsoever, ecclesiastical or civil, of any parish, chapelry, or district, except as is herein expressly provided. 6 & 7 Vict. c. 37. Act not to affect parochial rights, &c. otherwise than as expressly provided.

XIX. The said recited Acts, so far as they apply to making better provision for the cure of souls, shall extend to authorise the endowment or augmentation of the income of such ministers and perpetual curates as aforesaid, to such an amount or in such proportion, and in such manner, as shall be deemed expedient, by the authority aforesaid; and also to authorise the assigning, at any time and from time to time, to the incumbent of any church or chapel, whose fees, dues, or other emoluments shall be diminished by or in consequence of any proceeding under the provisions of this Act, and, if it be deemed fit by the like authority, to his successors also, of such an annual sum as shall, upon due inquiry, appear to be a just and reasonable compensation for such diminution. Endowment of minister. Compensation to incumbent of mother church.

* * * * * *

XXII. All and every person or persons, or body corporate, having in his or their own right any estate or interest in possession, reversion, or contingency of or in any lands, tithes, tenements, or other hereditaments, or any property of or in any goods or chattels, shall have full power, license, and authority, at his and their will and pleasure, by deed enrolled in such manner and within such time as is directed by the statute made in the twenty-seventh year of the reign of King Henry the Eighth, intituled "An Act concerning Enrolments of Bargains and Contracts of Lands and Tenements," in the case of any lands, tithes, tenements, or other hereditaments, Powers of bounty board as to endowment under 2 & 3 Anne, c. 11, and 45 Geo. III. c. 84, conferred upon commissioners for the purposes of this Act. 27 Hen. VIII. c. 16.

6 & 7 Vict. c. 37.

(but without any deed in the case of any goods or chattels,) or by his or their testament in writing, duly executed according to law, to give and grant to and vest in the said ecclesiastical commissioners and their successors all such his or their estate, interest, or property in such lands, tithes, tenements, or other hereditaments, goods, and chattels, or any part or parts thereof, for and towards the endowment or augmentation of the income of such ministers or perpetual curates as aforesaid, or for or towards providing any church or chapel for the purposes and subject to the provisions of this Act, and to be for such purposes respectively applied, according to the will of such benefactors respectively, as in and by such deed enrolled, or such testament, executed as aforesaid, may be expressed, or, in the case of no deed or testament, as may in some other manner be directed, and in default of such expression or direction then in such manner as shall be directed by the authority hereinbefore mentioned; and such commissioners and their successors shall have full capacity and ability to purchase, receive, take, hold, and enjoy, for the purposes aforesaid, as well from such persons as shall be so charitably disposed to give the same, as from all other persons who shall be willing to sell or aliene to the said commissioners any lands, tithes, tenements, or other hereditaments, goods, or chattels, without any license or writ of Ad quod damnum, the Statute of Mortmain, or any other statute or law, to the contrary notwithstanding.

See 14 & 15 Vict. c. 97, s. 24, and 19 & 20 Vict. c. 104, ss. 4 and 16.

Powers of 3 & 4 Vict. c. 113, and 4 & 5 Vict. c. 39, extended to this Act.

XXIII. All the powers and authorities vested in Her Majesty in council and in the said commissioners by the said recited Acts, with reference to the matters therein contained, and all other the provisions of the same Acts

relating to schemes and orders prepared, made, and issued for the purposes thereof, shall be continued and extended and shall apply to Her Majesty in council and to the said commissioners, and to all schemes and orders prepared, made, and issued by them respectively, with reference to all matters contained in this Act, as fully and effectually as if the said powers, authorities, and other provisions were repeated herein; and the provisions contained in an Act passed in the second year of Her Majesty's reign, intituled "An Act to abridge the holding of Benefices in Plurality, and to make better Provision for the Residence of the Clergy," respecting the party or parties to be deemed patron or patrons, for the purposes of notice to be served upon and consent to be given by such patron or patrons, and also respecting the manner in which and the party by whom any such consent is to be given, shall be construed to apply to the like matters respectively under this Act.

6 & 7 Vict. c. 37.

1 & 2 Vict. c. 106.

Church Building Commissioners may make grants for purposes of this Act.

XXIV. It shall be lawful for the said commissioners to make any such grant in aid of the erection of any such new church or chapel as aforesaid as shall seem fit to them, if they are authorised so to do under the Church Building Acts, although the right of patronage of such church or chapel may not belong on the consecration thereof to the incumbent of the original parish in which such church or chapel shall be situate, anything in such Acts to the contrary notwithstanding.

* * * * * *

Act not to extend to Scotland or Ireland.

XXVI. This Act shall extend only to England and Wales, *the Isle of Man*, the Islands of Guernsey, Jersey, Alderney, and Sark, and the Scilly Islands.

By 60 & 61 Vict. c. 33, this Act is not to extend to the Isle of Man.

* * * * * *

NEW PARISHES ACT, 1844.

7 & 8 Vict. c. 94.

7 & 8 VICT. C. 94.

An Act to explain and amend an Act for making better Provision for the Spiritual Care of Populous Parishes. [9th August, 1844.]

See note to 6 & 7 Vict. c. 37, *ante*, p. 648.

* * * * * *

Construction of certain terms in 6 & 7 Vict. c. 37.

VII. In the construction of the said recited Act the words "goods and chattels" shall be construed to extend to and comprehend all personal estate and property whatsoever; and the word "testament" shall be construed to extend to and comprehend any will or testamentary paper whatsoever, including under such definition the execution by any such will, testament, or testamentary paper of any appointment, in pursuance of any power, howsoever conferred or acquired.

Original map or plan may be registered.

VIII. Notwithstanding anything in the said recited Act contained, it shall be lawful to transmit the original map or plan annexed to any scheme laid before Her Majesty in council under the provisions of the said recited Act, to be registered in the registry of the diocese, instead of a copy thereof, as provided by the same Act.

Bounds of districts may be varied within limited time.

IX. It shall be lawful, by the authority in the said recited Act provided, at any time or times within twelve months after the date of the license of the minister first licensed to any separate district constituted under the provisions of the same Act, to alter the bounds of such district, although any alteration be not required with a view to the constituting of another separate district:

Provided always, that the scheme for making any such alteration shall be subject to all the provisions in the same Act and in this Act contained relating to schemes for constituting separate districts thereunder; and that any portion of any such separate district which by any such alteration as aforesaid shall become detached or excluded therefrom shall to all intents and purposes again belong to and form part of the parish, chapelry, or district out of which such portion was taken, upon such separate district being originally constituted, or to and of any new district, as shall be determined by the like authority. 7 & 8 Vict. c. 94.

See 13 & 14 Vict. c. 94, s. 27.

X. In the case of any district constituted under the provisions of the said recited Act nothing contained in the scheme or order for constituting the same shall in any manner whatever affect any parish, chapelry, or district, as to the pastoral superintendence of the inhabitants thereof or otherwise, until a minister shall have been duly licensed to such newly constituted district. Until minister licensed, cure of souls not affected.

XI. Any grant, conveyance, or assurance which shall be made to the said commissioners by deed, under the authority of the said recited Act, of any lands, tithes, tenements, or other hereditaments, may be made according to the form in the schedule hereunto annexed contained, or as near thereto as the circumstances of the case will admit; and every such conveyance and assurance shall be valid and effectual in the law to all intents and purposes. Form of grant or conveyance.

* * * * * *

SCHEDULE.

I [*or* We, *or the corporate title, if a corporation*], under the authority of Acts passed in the sessions of Parliament held in

7 & 8 Vict. c. 94. the sixth and seventh and seventh and eighth years of the reign of her present Majesty, intituled respectively, "An Act to make better Provision for the Spiritual Care of Populous Parishes," and "An Act to explain and amend an Act to make better Provision for the Spiritual Care of Populous Parishes," do by these presents freely and voluntarily, and without any valuable consideration, give, grant, convey, and assure to the ecclesiastical commissioners for England all [*describe the premises to be conveyed*] and all [my, *or* our, *or* the] right, title, and interest [of, *if a corporation*,] to and in the same and every part thereof, to hold to the said commissioners and their successors for the purpose of [*describe the particular purpose, being some purpose within the provisions of the said Acts, or say, generally*, for the purposes of the said Acts]. In witness whereof, &c.

By s. 63 of the Conveyancing Act, 1881, the "all right," &c. clause is now unnecessary.

NEW PARISHES ACT, 1856.

19 & 20 Vict. c. 104.

19 & 20 VICT. C. 104.

An Act to extend the Provisions of an Act of the sixth and seventh years of Her Majesty, for making better Provision for the Spiritual Care of Populous Parishes, and further to provide for the Formation and Endowment of separate and distinct Parishes (*a*).

[29th July, 1856.]

* * * * * *

Power to constitute new districts under

I. It shall be lawful to constitute districts under the provisions of the said Acts, notwithstanding that there may be within the limits of any such district a con-

(*a*) This Act is often referred to as Lord Blandford's Act (see note to 6 & 7 Vict. c. 37, *ante*, p. 648).

secrated church or chapel, any local Act to the contrary notwithstanding. 19 & 20 Vict. c. 104.

II. It shall be lawful for the commissioners, in the scheme for constituting any district, to specify some existing or intended church within the district as the parish church of such district, and immediately upon the issuing of the order of Her Majesty in council ratifying such scheme such district shall become and be a new parish, and such church, when consecrated, the church thereof, and the incumbent of such church the incumbent thereof, in the same manner, and to the same extent, to all intents and purposes, as is contemplated with respect to new parishes formed under the said Acts, and to the churches and incumbents thereof respectively; and the incumbent of such church shall be liable to the performance of all pastoral duties within the limits of such new parish. recited Acts. District containing a church to become a new parish on being constituted a separate district by order in council.

III. It shall be lawful to recommend the constitution of such district without providing in the scheme for the same the permanent endowment required by the ninth section of the first-recited Act, if it shall appear to the commissioners, and shall be declared in the said scheme, that there is reason to expect from other sources an adequate maintenance for the incumbent. District may be constituted without providing endowment as required by s. 9 of the 6 & 7 Vict. c. 37.

IV. The powers and provisions contained in the twenty-second section of the said first-recited Act, enabling any person or body corporate to give and grant lands, tithes, tenements, or other hereditaments, goods or chattels, for the purposes of the said Act, shall be construed and held to authorise any ecclesiastical or collegiate corporation, aggregate or sole, to give or grant any lands, tithes, tenements, or other hereditaments, goods or chattels, belonging to such corporation, in such manner as is in the said firstly and secondly Section 22 of 6 & 7 Vict. c. 37 to apply to ecclesiastical and collegiate corporations.

19 & 20 Vict. c. 104.

recited Acts mentioned, for the purposes of the said recited Acts or of this Act: Provided always, that the said powers shall not be exercised by the incumbent of any benefice with cure of souls without the consent of the patron of such benefice.

Right to pews in the old parish church not to be retained after occupation of sittings in the new.

V. Every person resident within the limits of any new parish or district already formed under any of the Church Building Acts, or hereafter to be formed under the provisions of the said Acts of the sixth and seventh years of Her Majesty, chapter thirty-seven, and the seventh and eighth years of Her Majesty, chapter ninety-four, or of this Act, who shall have claimed and have had assigned to him sittings in the church of such new parish, shall thereby surrender, as to any right that he may have possessed, an equal number of sittings in the church of the original parish or other ecclesiastical district out of which such parish shall have been taken, unless such last-mentioned sittings be held by faculty or under an Act of Parliament.

Pew rents may be taken according to scale, and applied towards repair of church and providing endowment.

VI. It shall be lawful for the commissioners, if it shall appear to them that sufficient funds cannot be provided from other sources, but not otherwise, with the consent of the bishop of the diocese under his hand, to order and declare by an instrument in writing under their common seal that annual rents may be reserved and taken in respect of any pews or sittings in any church to or for which a district may hereafter be assigned under the provisions of the said recited Acts or of this Act, and such rents shall be charged, levied, and taken by the churchwardens for the time being of such church after a rate or scale which shall be specified in such instrument, and the proceeds not otherwise appropriated by law shall be applied towards the repair and maintenance of the same church, and the main-

tenance of the minister and the services thereof, and the endowment of such church, in such manner as shall be specified in such instrument, and to no other uses: Provided always, that one half part at least of the whole number of pews or sittings in such church shall be free sittings, and that it shall be shown to the satisfaction of the said commissioners that the said free sittings will, with respect to position and convenience, be as advantageously situated as those for which a rent may be fixed and reserved. 19 & 20 Vict. c. 104.

* * * * * *

IX. The parish clerk and sexton of the church of any parish constituted under the said recited Acts or this Act shall and may be appointed by the incumbent for the time being of such church, and be by him removable, with the consent of the bishop of the diocese, for any misconduct. Clerk and sexton to be appointed by incumbent.

X. The freehold of the site of the church of any new parish created under this Act or the said firstly and secondly recited Acts, and of the churchyard, burial ground, and vaults belonging thereto, with the rights, members, and appurtenances thereof, but in case the same shall be vested in any vestry by any local Act of Parliament then not without the consent of such vestry, and the house of residence, with the appurtenances thereof, and all the lands, tithes, tenements, hereditaments, and other endowments belonging to such church, or held by or vested in any person or body corporate in trust exclusively for or for the exclusive benefit of the incumbent of such church, shall become and be vested in such incumbent and his successors for ever, and be held and enjoyed by him and them in right of such incumbency; and all lands, tenements, or hereditaments Freeholds of titles of churches and burial grounds to vest in incumbents.

19 & 20 Vict. c. 104.

granted or conveyed for the site of any church, and upon which any church shall be built, or for a burial ground, shall from and after the consecration of such church and burial ground respectively remain and be freed from and discharged of all the estate, right, title, interest, claim, and demand of any person, body politic or corporate whatsoever, unto or out of the same or any part thereof respectively, subject nevertheless to any rent that may be reserved thereout, and to the covenants and conditions subject to which the same may have been granted or conveyed.

In 1816, under a local Act, a new church was built in St. Pancras, which was to be "the parish church," the old church being thereby converted into a "parish chapel." In 1853, by an order in council, the original burial place for the parish, which surrounded the old church, and also an additional ground provided under an earlier local Act, were closed, and a cemetery was provided for the whole parish. In 1863 that part of the parish in which the old church stood was turned into a new district, and the "parish chapel" was declared to be the church of that district. It was held by the Exchequer Chamber, affirming the judgment of the Court of Common Pleas, that this section did not operate to vest the old churchyard in the incumbent of the new district church, but that the freehold thereof still remained in the vicar of the parish (*Champneys* v. *Arrowsmith*, [1867] L. R. 3 C. P. 107).

Offices of the Church to be performed in all churches or chapels, on application of the incumbent.

XI. The commissioners may, if they shall think fit, upon application of the incumbent of any church or chapel to which a district shall belong, with the consent in writing of the bishop of the diocese, make an order, under their common seal, authorising the publication of banns of matrimony and the solemnisation therein of marriages, baptisms, churchings, and burials, according to the laws and canons now in force in this realm; and all the fees payable for the performance of such offices, as well as all the mortuary and other ecclesiastical fees,

dues, oblations, or offerings arising within the limits of such district, shall be payable and be paid to the incumbent of such district. 19 & 20 Vict. c. 104.

XII. In every case in which all or any part of the fees or other ecclesiastical dues arising within the limits of any district or payable in respect of marriages, baptisms, churchings, and burials in the church or chapel thereof, or of such fees as are hereby made payable to the incumbent of any district, shall have been reserved, or if such last-mentioned order had not been made would of right belong to the incumbent of the original parish, district, or place out of which the district of such church or chapel shall have been taken, or to the clerk thereof, an account of such fees shall be kept by the incumbent of such church or chapel, who is hereby required to receive and every three months pay over the same to the incumbent and clerk respectively who would have been entitled to them in case such districts had not been formed; and from and after the next avoidance of such incumbency, or the relinquishment of such fees by such incumbent, and after the situation of such clerk shall have become vacant, or after a compensation in lieu of fees has been awarded to such clerk by the bishop of the diocese, which he is hereby empowered to do, such reservation shall altogether cease and determine; and all such fees and dues shall belong to the incumbent of the district within which the same shall arise, or to the clerk of the church thereof. Reserved fees to belong to original incumbent until first avoidance, then to the incumbent of new parish.

XIII. The provisions contained in the nineteenth section of the sixth and seventh Victoria, chapter thirty-seven, relating to compensation to be given as therein mentioned, shall be applicable to and may be exercised by the commissioners in like manner with respect to persons affected by the provisions of this Act. Provisions of 19th section of 6 & 7 Vict. c. 37 extended.

19 & 20 Vict. c. 104.

Districts may become separate and distinct parishes.

XIV. Wheresoever or as soon as banns of matrimony and the solemnisation of marriages, churchings, and baptisms according to the laws and canons in force in this realm are authorised to be published and performed in any consecrated church or chapel to which a district shall belong, such district not being at the time of the passing of this Act a separate and distinct parish for ecclesiastical purposes, and the incumbent of which is by such authority entitled for his own benefit to the entire fees arising from the performance of such offices without any reservation thereout, such district or place shall become and be a separate and distinct parish for ecclesiastical purposes, such as is contemplated in the fifteenth section of the first-recited Act, and the church or chapel of such district shall be the church of such parish, and all and singular the provisions of the said firstly and secondly recited Acts (as amended by this Act) relative to new parishes, upon their becoming such, and to the matters and things consequent thereon, shall extend and apply to the said parish and church as fully and effectually as if the same had become a new parish under the provisions of the said last-mentioned Acts.

As to what are "ecclesiastical purposes" within this section, and as to the right to fees, see *Fuller* v. *Alford*, [1883] 10 Q. B. D. 418. The burial of the dead has been held to be such a purpose (*Hughes* v. *Lloyd*, [1888] 22 Q. B. D. 157).

See as to fees, *Cronshaw* v. *Wigan Burial Board*, set out *ante*, p. 26.

Incumbents of new parishes to have exclusive cure of souls therein.

XV. The incumbent of every new parish created or hereafter to be created pursuant to the provisions of the said firstly and secondly recited Acts or of this Act shall, saving the rights of the bishop of the diocese, have sole and exclusive cure of souls and the exclusive right of performing all ecclesiastical offices within the limits of the same, for the resident inhabitants therein, who

shall for all ecclesiastical purposes be parishioners thereof, and of no other parish, and such new parish shall, for the like purposes, have and possess all and the same rights and privileges, and be affected with such and the same liabilities, as are incident or belong to a distinct and separate parish, and to no other liabilities: Provided always, that nothing herein contained shall be taken to affect the legal liabilities of any parish regulated by a local Act of Parliament, or the security for any loan of money legally borrowed under any Act of Parliament or otherwise. 19 & 20 Vict. c. 104.

The provisions of this section do not alter the rights and liabilities of churchwardens and overseers under 5 Geo. IV. c. 36 (*Reg.* v. *Churchwardens of All Saints, Wigan*, [1876] 1 App. Cas. 611).

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XXIII. All endowments, of whatever form and character, which shall hereafter be provided for any parish, district, or benefice, and the church or chapel thereof, under the provisions of the said firstly and secondly recited Acts or of this Act, shall be settled and assured by the body or person providing the same, to the satisfaction of the commissioners, by such deed or deeds and in such manner as the commissioners shall from time to time direct, unto and to the use of the incumbent for the time being of the church or chapel of such parish, district, or benefice, and his successors for ever; and such deeds shall be valid and effectual in law to all intents and purposes, whether such church or chapel shall be vacant or full of an incumbent, and notwithstanding the Statute of Mortmain or any other law or statute whatsoever. Lands, tithes, &c. and other endowments to vest in incumbent and his successors.

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XXV. It shall be lawful for the commissioners, by the authority aforesaid, and subject to such consents as Parishes may be divided.

19 & 20 Vict. c. 104. with certain consents.

are hereinafter mentioned, to divide any parish into two or more distinct and separate parishes for all ecclesiastical purposes whatsoever, and to fix and settle the respective proportion of tithes, glebe lands, and other endowments which shall arise, accrue, remain, and be within each of such respective divisions, according as by the like authority shall be deemed advisable; and the order made by Her Majesty in council, ratifying the scheme for such division, shall be good and valid in law for the purpose of effecting the same; and such scheme shall set forth the particular expediency of such division, and how far it may be necessary in consequence thereof to make any alteration in ecclesiastical jurisdiction, and how the changes consequent upon such division in respect of patronage, rights of pew holders, and other rights and privileges, glebe lands, tithes, rent-charges, and other ecclesiastical dues, oblations, offerings, rates, and payments, may be made with justice to all parties interested; and such scheme shall also contain such directions and regulations relative to the duties and character of the incumbents of the respective divisions of such parish, and to the performance of the offices and services of the Church in the respective churches thereof, and to the fees to be taken for the same respectively, and to any other matter or thing which may be necessary or expedient by reason or in consequence of such change: Provided always, that such division shall be made in the following cases with the following consents only; that is to say, in the case of a benefice in the patronage of the Crown, or in the Chancellor of the Duchy of Lancaster for the time being, or of the Duke of Cornwall, or of any archbishop or bishop, or of any lay or ecclesiastical corporation aggregate, or of a benefice in private patronage, with the consent of the patrons

thereof respectively, with the consent of the bishop of the diocese, such consents to be testified as aforesaid: and provided also, that no such provision shall take effect until after the first avoidance then next ensuing of the church of the parish to be so divided, unless with the consent in writing of the actual incumbent thereof. 19 & 20 Vict. c. 104.

In new parishes and parishes already divided, a division and re-settlement of endowments may be made.

XXVI. In cases where any parish shall have been divided into two or more distinct and separate parishes, or where any district or new parish shall have been constituted or formed out of any parish, district, or place, it shall be lawful, by the authority aforesaid, and with the consent of each of the respective patrons and incumbents of such distinct and separate parishes, or of such parish, district, or place, as the case may be, to make a separation and division of the glebe lands, tithes, rent-charges, and other endowments belonging to such distinct and separate parishes, or to such parish, district, or place, and to annex and resettle the same to and for the benefit of such distinct and separate parishes, or of such parish, district, or place, and the district or new parish constituted or taken thereout, as the case may be, in such manner and proportions as by the authority aforesaid may be deemed expedient, and to make such regulations and arrangements as may be requisite for effectually completing such division and settlement as aforesaid; and upon every such resettlement of endowments, whenever the whole of the ecclesiastical dues arising within the limits of any parish, district, or place, consisting of any prædial or rectorial tithe shall become and be made payable to the incumbent of such parish, district, or place, such parish, district, or place shall thereupon become and be a rectory, and such incumbent the rector thereof, anything hereinbefore contained to the contrary notwithstanding.

19 & 20 Vict. c. 104.

As to providing houses of residence for spiritual persons serving any church or chapel.

XXVII. For the purpose of providing for the incumbent of any church or chapel a convenient house of residence, or for a site thereof, or for a garden or glebe thereto, it shall be lawful for any body or person who shall give, grant, or convey to the ecclesiastical commissioners any messuage, lands, tenements, or hereditaments, to give or grant the same, and for the said commissioners to receive the same, subject to such conditions and stipulations, for the purpose of more effectually securing the same to and for the use of such spiritual person aforesaid and his successors for ever, as may be agreed upon between the said commissioners and the body or person so giving or conveying the same.

Churchwardens to be paid compensation for rights of common.

XXVIII. Whereas it is enacted by the thirty-eighth section of the fifty-eighth George the Third, chapter forty-five, that a sum for compensation of rights of common shall be paid to the churchwardens of the respective parishes wherein such commons or waste lands shall lie, and doubts have arisen whether it is compulsory or permissive, on the part of the churchwardens, to receive the same: It is hereby declared, that it shall be compulsory for the churchwardens to accept payment of the said compensation.

Nothing to affect provisions of 13 & 14 Vict. c. 41, &c.

XXIX. Nothing herein contained shall be construed to affect or alter the provisions of the Parish of Manchester Division Act, 1850, or to affect or alter any existing or special rights, privileges, or liabilities whatsoever, ecclesiastical or civil, of any parish, district, or place, except as is herein otherwise provided.

Powers of 3 & 4 Vict. c. 113, and 4 & 5 Vict. c. 39, extended to this Act.

XXX. All the powers and authorities vested in Her Majesty in council and the ecclesiastical commissioners by an Act of the third and fourth years of Her Majesty, chapter one hundred and thirteen, and by an Act of the fourth and fifth years of Her Majesty,

chapter thirty-nine, with reference to the matters therein contained, and all other the provisions of the same Acts relative to schemes and orders prepared, made, and issued for the purposes thereof, shall be continued and extended and shall apply to Her Majesty in council, and to the commissioners, and to all schemes and orders prepared, made, and issued by them respectively with reference to all matters contained in this Act, as fully and effectually as if the said powers, authorities, and other provisions were repeated herein, and the said recited Acts and this Act shall be read and construed as one and the same Act. 19 & 20 Vict. c. 104.

XXXI. It shall be lawful for the commissioners, with the consent of the bishop of the diocese and of the patron and incumbent of the church of any parish, to apportion any sum arising from a permanent endowment belonging to such church, and applicable to the repair and maintenance thereof, to the repair or maintenance of any church or churches situated within the original limits of such parish, anything contained in any local Act to the contrary notwithstanding. Commissioners may apportion endowment.

XXXII. For the purposes of the Acts concerning or regulating the burial of the dead, every parish created under the said recited Acts or this Act shall be held to be an ecclesiastical district within the meaning of the said Acts. For purposes of burial, parishes to be ecclesiastical districts.

XXXIII. In the construction of this Act:

The expression "parish, district, or place," shall mean and include any ancient or distinct and separate parish, district parish, chapelry, district chapelry, consolidated chapelry, or extra-parochial place; and the word "extra-parochial place" shall include any township, vill, village, or hamlet, being extra-parochial: Interpretation of certain terms.

19 & 20 Vict. c. 104.

The word "commissioners" shall mean the ecclesiastical commissioners:

The word "lands" shall extend to and include manors, messuages, buildings, tenements, and hereditaments, corporeal and incorporeal, of every tenure and description:

The word "tithes" shall mean and include all commuted and uncommuted rent-charges in lieu of tithes, portions and parcels of tithe, and all moduses, compositions, prescriptive and customary payments:

The expression "body or person" shall mean and include any body politic, corporate, or collegiate, the trustees, guardians, commissioners, or other persons having the control, care, or management of any hospital, school, or charitable foundation, and any corporation aggregate or sole as well as one person:

The word "bishop" shall include archbishop.

Extent of Act.

XXXIV. This Act shall extend only to that part of the United Kingdom called England and Wales, and to the *Isle of Man, and to the* Islands of Guernsey, Jersey, Alderney, and Sark, and to the Scilly Islands.

By 60 & 61 Vict. c. 33, this Act is repealed as to the Isle of Man.

Short titles of Acts.

XXXV. Whenever it may be necessary to cite this Act, it shall be sufficient to use the expression "New Parishes Act, 1856."

NEW PARISHES, ETC. ACT, 1869.

32 & 33 VICT. C. 94. 32 & 33 Vict. c. 94.

An Act to amend the New Parishes Acts and Church Building Acts. [11th August, 1869.]

* * * * * *

This Act, by the Short Titles Act, 1896, may be referred to as the New Parishes Acts and Church Building Acts Amendment Act, 1869, and is grouped both with the Church Building Acts, 1818 to 1884, and with the New Parishes Acts, 1843 to 1884.

Powers of New Parishes Acts to apply at any time to new parishes for ecclesiastical purposes.

1. The powers and provisions relating to the alteration of the boundaries of districts which are contained in the ninth section of the "New Parishes Act, 1844," shall, notwithstanding the lapse of the periods of twelve months and five years mentioned in the same section and in the twenty-seventh section of the Act of the thirteenth and fourteenth years of Her Majesty, chapter ninety-four, respectively, or either of them, be at any time applicable to the alteration of the boundaries of any and every ecclesiastical district which may or shall have become a new parish for ecclesiastical purposes under the provisions of the "New Parishes Acts," whether such district has been or shall have been originally created under the provisions of the said Acts or any of them, or of any other Act of Parliament.

Pews or sittings may be surrendered to Ecclesiastical Commissioners.

2. Whenever by virtue of any public or private Act of Parliament now or hereafter in force, or by virtue of any deed or instrument, the pews or sittings, or some or one of the pews or sittings, in any church or chapel, consecrated or unconsecrated, are or is or shall be subject to any trust as to the grant, demise, sale,

32 & 33 Vict. c. 94.

or disposal of such pews or sittings, pew or sitting, or are, is, or shall be the private property for any estate whatsoever of any person or persons, then and in every such case it shall be lawful for the trustees of such church or chapel, or other the persons exercising powers of grant, demise, sale, or disposal as aforesaid, or for all or any persons possessing on their own behalf or on the behalf of others any rights, qualified or unqualified, of ownership, by reason of any such grant, demise, sale, or disposal as aforesaid, or for any person or persons to whom any pews or sittings, pew or sitting, in such church or chapel, shall belong, for any estate whatsoever, under or by virtue of such Act of Parliament, deed, or instrument as aforesaid, with or without consideration, to surrender and for ever yield up, either altogether or separately, and according to the nature and extent of their several rights and interests, to the bishop of the diocese wherein such church or chapel is situate, or to the ecclesiastical commissioners for England, who are hereby respectively authorised to accept every such surrender, all rights of ownership, grant, demise, sale, disposal, or other right whatsoever which they the said trustees, persons or person, may have in, over, or in respect of such pews or sittings, pew or sitting.

Surrender to be by deed, executed by the parties, including bishop of diocese.

3. Every such surrender shall be made by deed executed by all the parties to the same, amongst whom shall be included the bishop of the diocese wherein the church or chapel to be affected by it is situate, and the patron or patrons of such church or chapel aforesaid; and such deed shall be registered in the registry of the said diocese.

Upon surrender all rights of

4. So soon as all rights and powers over or in respect of the pews or sittings in any such church or chapel

shall have been surrendered to the bishop of the diocese or to the said commissioners as aforesaid, the trusts or rights of ownership, and the obligations affecting such pews or sittings, or any of them, under such Act of Parliament, deed, or instrument as aforesaid, shall at once and ipso facto determine, and all the provisions of such Act of Parliament, deed, or instrument as to pews or sittings in such church or chapel shall thenceforth be void and of none effect.

32 & 33 Vict. c. 94. ownership, &c. to cease.

5. From and after every such surrender to the said bishop or commissioners, the pews or sittings, pew or sitting, affected thereby shall, to the extent of the rights or powers expressed to be surrendered, be subject to the same laws as to all rights and property therein as the pews and sittings of ancient parish churches are now subject to: Provided that if the church or chapel be not consecrated, such pews or sittings, pew or sitting, shall belong absolutely to the bishop and his successors or to the said commissioners, as the case may be, until the consecration of the said church or chapel, and from and after the consecration thereof the right of the said bishop or commissioners shall cease, and the said pews or sittings shall be subject to the same laws as to all rights and property therein as the pews and sittings of ancient parish churches.

And pews, &c. subject as pews of ancient parish churches.

6. The powers and provisions hereinbefore contained as to pews and sittings subject to trusts as aforesaid in any such church or chapel as aforesaid shall, mutatis mutandis, be held to apply to and shall be held to authorise the absolute transfer and conveyance to the said commissioners, by any deed or deeds, made without consideration and executed by all the parties thereto as aforesaid, of the freehold of any church or chapel,

Powers hereinbefore contained to apply to and authorise absolute transfer to Ecclesiastical Commissioners.

32 & 33 Vict. c. 94.

consecrated or unconsecrated, and of the vaults therein or thereunder, which, under or by virtue of any such Act of Parliament, deed, or instrument as aforesaid, is or are or shall be vested in any persons or person in their own right or as trustees or trustee of such church or chapel for an estate in perpetuity; and if such church or chapel be unconsecrated at the time of such transfer and conveyance, such freehold so transferred and conveyed shall remain in the said commissioners until the consecration of the same church or chapel, and shall then ipso facto become subject to the same laws as to all rights and property therein as the pews and sittings of ancient parish churches.

Upon complete surrender, all rights created by Act for building church to cease.

7. In every case in which a complete surrender and determination of the rights, powers, obligations, and trusts affecting the pews or sittings in a church or chapel shall have been carried out as aforesaid, and in every case in which such transfer and conveyance as aforesaid of the freehold of a church or chapel, and the vaults (if any) thereof, shall have been effected, all other rights, powers, obligations, and trusts created, conferred, or enforced as to such church or chapel by the Act of Parliament, deed, or instrument under which such church or chapel was built, shall upon such complete surrender and determination, or (as the case may be) such transfer and conveyance, absolutely cease and determine; Provided always, that such cesser and determination shall not diminish or in anywise affect any right or rights of patronage.

Provision for sites of churches pulled down.

8. In and by any faculty granted by a bishop for wholly pulling down any church, under the provisions contained in the first section of the Act eighth and ninth Victoria, chapter seventy, it shall be lawful to make such provision as such bishop may deem proper

and expedient for the use or preservation of the site of such church, either by the incumbent of the substituted church, or by the churchwardens of the parish wherein such site lies, or by any other person being the owner of the freehold of the land adjoining such site with the consent of the incumbent and of such other person. 32 & 33 Vict. c. 94.

9. In every case where the respective incumbents of two or more benefices held in severalty (whether each of such benefices belongs to the same patron or to different patrons) have or shall have by statute or by custom the right in virtue of their respective incumbencies to execute the office of an incumbent within one and the same church, and within no other church other than a chapel of ease, then the powers and provisions given by and contained in the seventy-second section of the Act of the third and fourth years of Her Majesty, chapter one hundred and thirteen, with respect to the consolidation of two or more portions of a benefice divided as therein mentioned into one benefice to be held by one incumbent, shall, subject to the conditions therein expressed, be available for and shall apply to and may be used for effecting the consolidation of both or all of such benefices into one benefice to be held by one incumbent, and this notwithstanding that such benefice when so united may include the cure of souls within more than one parish: Provided always, that any plan or scheme for such consolidation to be framed under the provisions of the Act last mentioned may contain a regulation that such consolidation shall not take effect until after the next avoidance of any one or more of such benefices to be specially named in such plan or scheme; and provided also, that nothing herein contained shall be held to create an union of the two or more parishes so as aforesaid to be included within such united benefice, The portions of a benefice held in severalty may be consolidated into one.

32 & 33 Vict. c. 94.

but that each of such parishes shall remain for all purposes, civil and ecclesiastical, precisely in the same position as if no such union of benefices as aforesaid had taken place.

Part of 19 & 20 Vict. c. 104, s. 18, repea'ed.

10. . . . The private patron in any such case shall have one month's notice from the ecclesiastical commissioners, and he may require the commissioners to assess the amount of diminution in the value of his advowson, if any, likely to be caused by any contemplated assignment of patronage under the said Act, or may require that such diminution shall be ascertained by reference to the decision of two arbitrators, one to be appointed by himself and the other by the commissioners, and if thereupon it shall appear that any such diminution will be caused by the assignment of patronage contemplated, such private patron shall be entitled to claim and recover the amount of such diminution from the person or persons or body to whom the said assignment of patronage may be made.

As to parish where there is no church and no patron.

11. In the case of any parish or place wherein there is no parish church nor any person known to be or claiming to be patron of the ancient church or advowson, if any, of such parish or place, then for all purposes of forming an ecclesiastical district or ecclesiastical districts either wholly or partly out of such parish or place under the powers of the Church Building Acts or New Parishes Acts, or any other Act or Acts of Parliament now or hereafter in force, such parish or place shall be deemed to be and shall be treated for such purposes as an extra-parochial place, and in any case in which notice shall be required to be sent or given to a patron under the provisions of such Acts or any of them it shall be sufficient with respect to such parish or place so to be treated as an

extra-parochial place as aforesaid to send or give such notice to the bishop of the diocese alone, and such notice when so sent or given shall be held to be a full compliance with the requirements of the said Acts or Act in respect of such notice: Provided always, that nothing herein contained shall affect the rights of the Crown, if any, with regard to any such parish or place. 32 & 33 Vict. c. 94.

* * * * * *

14. The words church and chapel in this Act shall apply only to churches and chapels of the Established Church of England. Meaning of "church" and "chapel."

NEW PARISHES ACT, 1884.

47 & 48 VICT. C. 65.

47 & 48 Vict. c. 65.

An Act to further amend the New Parishes Acts and the Church Building Acts. [14th August, 1884.]

BE it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. This Act may be cited as the New Parishes Acts and Church Building Acts Amendment Act, 1884. Short title.

By the Short Titles Act, 1896, this Act is grouped with both the New Parishes Acts, 1843 to 1884, and the Church Building Acts, 1818 to 1884.

Amendment of New Parishes Acts.

2.—(1.) Where, under the New Parishes Acts, 1843, 1844, and 1856, or any of them, a district has been Power to dissolve district

47 & 48 Vict. c. 65. formed under New Parishes Acts. 6 & 7 Vict. c. 37. 7 & 8 Vict. c. 94. 19 & 20 Vict. c. 104.

constituted, but a church has not been provided for or allotted to such district, it shall be lawful for the ecclesiastical commissioners for England, if it appears to them expedient, to submit (with the consent of the bishop of the diocese under his hand) to Her Majesty in council a scheme for the dissolution of such district, and for the reincorporation of its area or parts or part thereof in the parish or parishes or district or districts out of which it was constituted, or for the addition of its area or parts or part thereof to some other parish or parishes or district or districts, as to the said commissioners may appear most expedient.

(2.) If an endowment has been provided for the district so dissolved, any scheme under this section shall provide for its return to and revesting in the body or person who provided the same; and any such scheme may contain such other incidental or auxiliary provisions as the said commissioners may deem necessary or proper.

(3.) The draft of any scheme made under this section must be delivered or transmitted to every incumbent or minister and patron affected thereby; and such scheme shall not be submitted to Her Majesty in council until after the expiration of one month next after such draft shall have been so delivered or transmitted, unless every such incumbent or minister and patron shall in the meantime consent thereto; and if any person shall at the time of the ratification of such scheme be the incumbent or minister of the district proposed to be dissolved, the scheme shall not have any operation unless and until such person shall have consented thereto, or shall have ceased to be such incumbent or minister.

(4.) A map or plan showing every alteration of

boundaries proposed to be effected by a scheme under this section shall be annexed to the draft scheme, and a copy of such map or plan settled so as to correspond with the provisions of the scheme as ratified, shall be registered by the registrar of the diocese, together with any order of Her Majesty in council ratifying such scheme, but it shall not be necessary to publish any such map or plan in the *London Gazette*. 47 & 48 Vict. c. 65.

(5.) Subject as aforesaid, the provisions of the said New Parishes Acts relative to the making, publication, and ratification of schemes shall apply to schemes under this section.

3. The powers as to alterations of boundaries contained in the first section of the New Parishes Acts and Church Building Acts Amendment Act, 1869, shall be applicable and may be exercised in the case of any district constituted under the New Parishes Acts, 1843, 1844, and 1856, or any of them, in which no church shall have been provided and consecrated, as well as in the case of a district which shall have become a new parish for ecclesiastical purposes. Amendment of s. 1 of 32 & 33 Vict. c. 94.

Amendment of Church Building Acts.

4.—(1.) Where a church or chapel has been constituted the parish church of a parish in the stead of the ancient parish church under the Act passed in the year 1838, "To amend and render more effectual the Church Building Acts," and provision has been made under section eighteen of the same Act for the maintenance of the ministers and clerks of the respective churches, or either of them, out of the pew rents of either of such churches, it shall be lawful for the ecclesiastical commissioners for England from time to time by deed under their common seal, made with Power to revoke or alter provision made under s. 18 of 1 & 2 Vict. c. 107, with respect to application of pew rents.

47 & 48 Vict. c. 65.

the consent of the bishop of the diocese, and of every patron and minister affected thereby, to revoke in whole or part or in any way to alter as they may see fit the deed or other instrument making such provision.

(2.) A consent under this section must be testified by writing under the hand of the person giving the same, and attested by at least one witness.

(3.) Any deed or other instrument making such provision as aforesaid, which is expressed to be revoked or altered by a deed duly made in compliance with this section, shall to the extent of such revocation or alteration cease to be in force and become of no effect.

Short titles of Church Building Acts.

5. The Acts specified in the schedule to this Act may together with this Act be collectively cited as the Church Building Acts, 1818 to 1884; and each of the said Acts may be cited by the short title in the third column of that schedule.

SCHEDULE.

Church Building Acts.

Session and Chapter.	Long Title.	Short Title.
58 Geo. III. c. 45. [1818.]	An Act for building and promoting the building of additional churches in populous parishes.	The Church Building Act, 1818.
59 Geo. III. c. 134. [1819.]	An Act to amend and render more effectual an Act passed in the last Session of Parliament, for building and promoting the building of additional churches in populous parishes.	The Church Building Act, 1819.

Session and Chapter.	Long Title.	Short Title.
3 Geo. IV. c. 72. [1822.]	An Act to amend and render more effectual two Acts passed in the fifty-eighth and fifty-ninth years of his late Majesty, for building and promoting the building of additional churches in populous parishes.	The Church Building Act, 1822.
5 Geo. IV. c. 103. [1824.]	An Act to make further provision, and to amend and render more effectual, three Acts passed in the fifty-eighth and fifty-ninth years of his late Majesty, and in the third year of his present Majesty, for building and promoting the building of additional churches in populous parishes.	The Church Building Act, 1824.
7 & 8 Geo. IV. c. 72. [1827.]	An Act to amend the Acts for building and promoting the building of additional churches in populous parishes.	The Church Building Act, 1827.
1 & 2 Will. IV. c. 38. [1831.]	An Act to amend and render more effectual an Act passed in the seventh and eighth years of the reign of his late Majesty, intituled "An Act to amend the Acts for building and promoting the building of additional churches in populous parishes."	The Church Building Act, 1831.

47 & 48 Vict. c. 65.	Session and Chapter.	Long Title.	Short Title.
	2 & 3 Will. IV. c. 61. [1832.]	An Act to render more effectual an Act passed in the fifty-ninth year of his late Majesty King George the Third, intituled "An Act to amend and render more effectual an Act passed in the last session of Parliament, for building and promoting the building of additional churches in populous parishes."	The Church Building Act, 1832.
	1 & 2 Vict. c. 107. [1838.]	An Act to amend and render more effectual the Church Building Acts.	The Church Building Act, 1838.
	2 & 3 Vict. c. 49. [1839.]	An Act to make better provision for the assignment of ecclesiastical districts to churches or chapels augmented by the Governors of the Bounty of Queen Anne, and for other purposes.	The Church Building Act, 1839.
	3 & 4 Vict. c. 60. [1840.]	An Act to further amend the Church Building Acts.	The Church Building Act, 1840.
	7 & 8 Vict. c. 56. [1844.]	An Act concerning banns and marriages in certain district churches or chapels.	The Church Building (Banns and Marriages) Act, 1844.
	8 & 9 Vict. c. 70. [1845.]	An Act for the further amendment of the Church Building Acts.	The Church Building Act, 1845.

Session and Chapter.	Long Title.	Short Title.
9 & 10 Vict. c. 68. [1846.]	An Act for better enabling the burial service to be performed in one chapel where contiguous burial grounds shall have been provided for two or more parishes or places.	The Church Building (Burial Service in Chapels) Act, 1846.
11 & 12 Vict. c. 37. [1848.]	An Act to amend the law relative to the assignment of ecclesiastical districts.	The Church Building Act, 1848.
14 & 15 Vict. c. 97. [1851.]	An Act to amend the Church Building Acts.	The Church Building Act, 1851.
17 & 18 Vict. c. 32. [1854.]	An Act to facilitate the apportionment of the rent when parts of lands in lease are taken for the purposes of the Church Building Acts.	The Church Building Act, 1854.
19 & 20 Vict. c. 55. [1856.]	An Act for transferring the powers of the Church Building Commissioners to the Ecclesiastical Commissioners for England.	The Church Building Commissioners (Transfer of Powers) Act, 1855.
32 & 33 Vict. c. 94. [1869.]	An Act to amend the New Parishes Acts and Church Building Acts.	The New Parishes Acts and Church Building Acts Amendment Act, 1869.

THE PUBLIC HEALTH ACT, 1875.

38 & 39 Vict. c. 55.

38 & 39 VICT. C. 55.

An Act for consolidating and amending the Acts relating to Public Health in England.

[11th August, 1875.]

Part I.

PART I.—PRELIMINARY.

BE it enacted as follows:

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Definitions.

4. In this Act, if not inconsistent with the context, the following words and expressions have the meanings hereinafter respectively assigned to them; that is to say,

"Borough" means any place for the time being subject to the Act of the session of the fifth and sixth years of the reign of King William the Fourth, chapter seventy-six, intituled "An Act to provide for the regulation of Municipal Corporations in England and Wales," and any Act amending the same:

"The metropolis" means the city of London and all parishes and places mentioned in Schedules (A), (B) and (C) to "The Metropolis Management Act, 1855":

"Local government district" means any area subject to the jurisdiction of a local board constituted in

pursuance of the Local Government Acts before the passing of this Act, and "local board" means any board so constituted:

"Improvement Act district" means any area for the time being subject to the jurisdiction of any improvement commissioners as hereinafter defined:

"Improvement commissioners" means any commissioners, trustees or other persons invested by any local Act with powers of town government and rating:

"Parish" means a place for which a separate poor rate is or can be made, or for which a separate overseer is or can be appointed:

"Union" means a union of parishes incorporated or united for the relief or maintenance of the poor under any public or local Act of Parliament, and includes any parish subject to the jurisdiction of a separate board of guardians:

"Guardians" means any persons or body of persons by whom the relief of the poor is administered in any union:

"Person" includes any body of persons, whether corporate or unincorporate:

"Local authority" means urban sanitary authority and rural sanitary authority:

"Surveyor" includes any person appointed by a rural authority to perform any of the duties of surveyor under this Act:

"Lands" and "premises" include messuages, buildings, lands, easements, and hereditaments of any tenure:

"Owner" means the person for the time being receiving the rack-rent of the lands or premises in connexion with which the word is used, whether

38 & 39 Vict. c. 55. Part I.

on his own account or as agent or trustee for any other person, or who would so receive the same if such lands or premises were let at a rack-rent:

"Rack-rent" means rent which is not less than two-thirds of the full net annual value of the property out of which the rent arises; and the full net annual value shall be taken to be the rent at which the property might reasonably be expected to let from year to year, free from all usual tenant's rates and taxes, and tithe commutation rent-charge (if any), and deducting therefrom the probable average annual costs of the repairs, insurance, and other expenses (if any) necessary to maintain the same in a state to command such rent:

"Street" includes any highway (not being a turnpike road), and any public bridge (not being a county bridge), and any road, lane, footway, square, court, alley, or passage whether a thoroughfare or not:

"House" includes schools, also factories and other buildings in which *more than twenty* persons are employed *at one time*:

The words in italics are repealed by s. 107 of "The Factory and Workshop Act, 1878" (41 & 42 Vict. c. 16).

"Drain" means any drain of and used for the drainage of one building only, or premises within the same curtilage, and made merely for the purpose of communicating therefrom with a cesspool or other like receptacle for drainage, or with a sewer into which the drainage of two or more buildings or premises occupied by different persons is conveyed:

"Sewer" includes sewers and drains of every de-

scription, except drains to which the word "drain" interpreted as aforesaid applies, and except drains vested in or under the control of any authority having the management of roads and not being a local authority under this Act:

"Slaughter-house" includes the buildings and places commonly called slaughter-houses and knackers' yards, and any building or place used for slaughtering cattle, horses, or animals of any description for sale:

"Water company" means any person or body of persons corporate or unincorporate supplying or who may hereafter supply water for his or their own profit:

"Waterworks" includes streams, springs, wells, pumps, reservoirs, cisterns, tanks, aqueducts, cuts, sluices, mains, pipes, culverts, engines, and all machinery, lands, buildings and things for supplying or used for supplying water, also the stock in trade of any water company:

"Bakehouse Regulation Act" means 26 & 27 Vict. c. 40 ("Bakehouse Regulation Act, 1863"):

"Artizans and Labourers Dwellings Act" means 31 & 32 Vict. c. 130 ("Artizans and Labourers Dwellings Act, 1868"):

"Baths and Wash-houses Acts" means 9 & 10 Vict. c. 74 (An Act to encourage the Establishment of Public Baths and Wash-houses): 10 & 11 Vict. c. 61 (An Act to amend the Act for the Establishment of Public Baths and Wash-houses):

"Labouring Classes Lodging Houses Acts" means 14 & 15 Vict. c. 34 ("Labouring Classes Lodging Houses Act, 1851"): 29 & 30 Vict. c. 28 ("Labouring Classes Dwelling Houses Act, 1866"): 30 & 31

38 & 39 Vict. c. 55. Part I.

Vict. c. 28 ("Labouring Classes Dwelling Houses Act, 1867"):

"Sanitary Acts" means all the above-mentioned Acts and the Acts mentioned in Part I. of Schedule V. to this Act:

"Sanitary purposes" means any object or purposes of the Sanitary Acts:

"Court of quarter sessions" means the court of general or quarter sessions of the peace having jurisdiction over the whole or any part of the district or place in which the matter requiring the cognizance of general or quarter sessions arises:

"Court of summary jurisdiction" means any justice or justices of the peace, stipendiary or other magistrate or officer, by whatever name called, to whom jurisdiction is given by the Summary Jurisdiction Acts or any Acts therein referred to:

"Summary Jurisdiction Acts" means the Act of the session of the eleventh and twelfth years of the reign of her present Majesty, chapter forty-three, intituled "An Act to facilitate the performance of the duties of justices of the peace out of sessions within England and Wales with respect to summary convictions and orders," and any Act amending the same.

The Interpretation Act, 1889, gives a definition of the Summary Jurisdiction Acts (52 & 53 Vict. c. 63, s. 13).

The Amending Acts are the Summary Jurisdiction Act, 1879 (42 & 43 Vict. c. 49), the Summary Jurisdiction (Process) Act, 1881 (44 & 45 Vict. c. 24), and the Summary Jurisdiction Act, 1884 (47 & 48 Vict. c. 43).

PART II.—AUTHORITIES FOR EXECUTION OF ACT.

CONSTITUTION OF DISTRICTS AND AUTHORITIES.

Urban and rural sanitary districts.

5. For the purposes of this Act England, except the metropolis, shall consist of districts to be called respectively—

(1.) Urban sanitary districts, and

(2.) Rural sanitary districts,

(in this Act referred to as urban and rural districts); and such urban and rural districts shall respectively be subject to the jurisdiction of local authorities, called urban sanitary authorities and rural sanitary authorities (in this Act referred to as urban and rural authorities), invested with the powers in this Act mentioned.

The definitions contained in this section and ss. 6 and 9 of this Act are cited in 50 & 51 Vict. c. 32, *ante*, p. 421, and have in that Act the meanings here assigned to them.

Description of urban districts and urban authorities.

6. Urban districts shall consist of the places in that behalf mentioned in the first column of the table in this section contained, and urban authorities shall be the several bodies of persons specified in the second column of the said table in relation to the said places respectively.

Urban District.	Urban Authority.
Borough constituted such either before or after the passing of this Act.	The mayor, aldermen, and burgesses acting by the council.
Improvement Act district constituted such before the passing of this Act, and having no part of its area situated within a borough or local government district.	The improvement commissioners.
Local government district constituted such either before or after the passing of this Act, having no part of its area situated within a borough, and not coincident in area with a borough or Improvement Act district.	The local board.

38 & 39 Vict. c. 55. Part II.

Provided that—

(1.) Any borough, the whole of which is included in and forms part of a local government district or Improvement Act district, and any Improvement Act district which is included in and forms part of a local government district, and any local government district which is included in and forms part of an Improvement Act district, shall for the purposes of this Act be deemed to be absorbed in the larger district in which it is included, or of which it forms part; and the improvement commissioners or local board, as the case may be, of such larger district, shall be the urban authority therein; and

(2.) Where an Improvement Act district is coincident in area with a local government district, the improvement commissioners, and not a local board, shall be the urban authority therein; and

(3.) Where any part of an Improvement Act district is situated within a borough or local government district, or where any part of a local government district is situated within a borough, the remaining part of such Improvement Act district or of such local government district so partly situated within a borough shall for the purposes of this Act continue subject to the like jurisdiction as it would have been subject to if this Act had not been passed, unless and until the local government board by provisional order otherwise directs.

For the purposes of this Act, the boroughs of Oxford, Cambridge, Blandford, Calne, Wenlock, Folkestone, and Newport, Isle of Wight, shall not be deemed to be boroughs, and the borough of Cambridge shall be deemed to be an Improvement Act district, and the borough of Oxford to be included in the local government district of Oxford. So much of the borough of Folkestone as

is not included within the local government district of Sandgate shall be an urban district, and shall be under the jurisdiction, for the purposes of this Act, of the authority for executing "The Folkestone Improvement Act, 1855."

The definitions contained in this section and s. 9 are applied to the Open Spaces Acts (50 & 51 Vict. c. 32, s. 1, *ante*, p. 421).

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Description of rural districts and rural authorities.

9. The area of any union which is not coincident in area with an urban district, nor wholly included in an urban district (in this section called a rural union), with the exception of those portions (if any) of the area which are included in any urban district, shall be a rural district, and the guardians of the union shall form the rural authority of such district: provided that—

(1.) An ex officio guardian resident in any parish or part of a parish belonging to such union, which parish or part of a parish forms or is situated in an urban district, shall not act or vote in any case in which guardians of such union act or vote as members of the rural authority, unless he is the owner or occupier of property situated in the rural district of a value sufficient to qualify him as an elective guardian for the union:

(2.) An elective guardian of any parish belonging to such union, and forming or being wholly included within an urban district, shall not act or vote in any case in which guardians of such union act or vote as members of the rural authority:

(3.) Where part of a parish belonging to a rural union forms or is situated in an urban district, the local government board may by order divide such parish into separate wards, and determine the number of guardians to be elected by such wards respectively, in such manner

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as to provide for the due representation of the part of the parish situated within the rural district; but until such order has been made the guardian or guardians of such parish may act and vote as members of the rural authority in the same manner as if no part of such parish formed part of or was situated in an urban district.

Where the number of elective guardians who are not by this section disqualified from acting and voting as members of the rural authority is less than five, the local government board may from time to time by order nominate such number of persons as may be necessary to make up that number from owners or occupiers of property situated in the rural district of a value sufficient to qualify them as elective guardians for the union, and the persons so nominated shall be entitled to act and vote as members of the rural authority but not further or otherwise.

Subject to the provisions of this Act, all statutes, orders, and legal provisions applicable to any board of guardians shall apply to them in their capacity of rural authority under this Act for purposes of this Act; and it is hereby declared that the rural authority are the same body as the guardians of the union or parish for or within which such authority act.

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Part III.

PART III.—SANITARY PROVISIONS.

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As to Sewage Works without District.

Notice to be given before commencing sewage

32. A local authority shall, three months at least before commencing the construction or extension of any sewer or other work for sewage purposes without the

district, give notice of the intended work by advertisement in one or more of the local newspapers circulated within the district where the work is to be made.

Such notice shall describe the nature of the intended work, and shall state the intended termini thereof, and the names of the parishes, and the turnpike roads and streets, and other lands (if any) through, across, under, or on which the work is to be made, and shall name a place where a plan of the intended work is open for inspection at all reasonable hours; and a copy of such notice shall be served on the owners or reputed owners, lessees or reputed lessees, and occupiers of the said lands, and on the overseers of such parishes, and on the trustees, surveyors of highways, or other persons having the care of such roads or streets.

This section and ss. 33 and 34 are those referred to in 42 & 43 Vict. c. 31, s. 2, sub-s. (2), *ante*, p. 264.

In case of objection, works not to be commenced without sanction of local government board.

33. If any such owner, lessee, or occupier, or any such overseer, trustee, surveyor, or other person as aforesaid, or any other owner, lessee, or occupier who would be affected by the intended work, objects to such work, and serves notice in writing of such objection on the local authority at any time within the said three months, the intended work shall not be commenced without the sanction of the local government board after such inquiry as hereinafter mentioned, unless such objection is withdrawn.

See note to last section.

Inspector to hold inquiry and report to local government board.

34. The local government board may, on application of the local authority, appoint an inspector to make inquiry on the spot into the propriety of the intended work and into the objections thereto, and to report to the local government board on the matters with respect

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to which such inquiry was directed, and on receiving the report of such inspector, the local government board may make an order disallowing or allowing, with such modifications (if any) as they may deem necessary, the intended work.

See note to s. 32.

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Mortuaries, &c.

Power of local authority to provide mortuaries.

141. Any local authority may, and if required by the local government board shall, provide and fit up a proper place for the reception of dead bodies before interment (in this Act called a mortuary), and may make bye-laws with respect to the management and charges for use of the same; they may also provide for the decent and economical interment, at charges to be fixed by such bye-laws, of any dead body which may be received into a mortuary.

This section and ss. 142 and 143 are among those referred to in 42 & 43 Vict. c. 31, s. 2, sub-s. (1), *ante*, p. 264.

Justice may in certain cases order removal of dead body to mortuary.

142. Where the body of one who has died of any infectious disease is retained in a room in which persons live or sleep, or any dead body which is in such a state as to endanger the health of the inmates of the same house or room is retained in such house or room, any justice may, on a certificate signed by a legally qualified medical practitioner, order the body to be removed, at the cost of the local authority, to any mortuary provided by such authority, and direct the same to be buried within a time to be limited in such order; and unless the friends or relations of the deceased undertake to bury the body within the time so limited, and do bury the same, it shall be the duty of the relieving officer to bury such body at the expense of the poor

rate, but any expense so incurred may be recovered by the relieving officer in a summary manner from any person legally liable to pay the expense of such burial. 38 & 39 Vict. c. 55. Part III.

Any person obstructing the execution of an order made by a justice under this section shall be liable to a penalty not exceeding five pounds.

See note to last section.

143. Any local authority may provide and maintain a proper place (otherwise than at a workhouse or at a mortuary) for the reception of dead bodies during the time required to conduct any post-mortem examination ordered by a coroner or other constituted authority, and may make regulations with respect to the management of such place; and where any such place has been provided, a coroner or other constituted authority may order the removal of the body to and from such place for carrying out such post-mortem examination, such costs of removal to be paid in the same manner and out of the same fund as the costs and fees for post-mortem examinations when ordered by the coroner. Power of local authority to provide places for post-mortem examinations.

See note to s. 141.

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PART IV.—LOCAL GOVERNMENT PROVISIONS. Part IV.

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151. The incumbent or minister of any church, chapel, or place appropriated to public religious worship, which is now by law exempt from rates for the relief of the poor, shall not be liable to any expenses under the last preceding section, as the owner or occupier of such church, chapel, or place, or of any churchyard or burial ground attached thereto, nor shall any such expenses be Exemption from expenses under last section of incumbent of church, &c.

38 & 39 Vict. c. 55. Part IV.

deemed to be a charge on such church, chapel, or other place, or on such churchyard or burial ground, or to subject the same to distress, execution, or other legal process; and the urban authority may, if they think fit, undertake any works from the expenses of which any such incumbent or minister is hereby exempted.

See note to s. 15 of 18 & 19 Vict. c. 128, *ante*, p. 183.

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Part V.

PART V.—GENERAL PROVISIONS.

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Purchase of Lands.

Power to purchase lands.

175. Any local authority may for the purposes, and subject to the provisions of this Act, purchase or take on lease, sell, or exchange any lands, whether situated within or without their district; they may also buy up any water-mill, dam, or weir which interferes with the proper drainage of or the supply of water to their district.

Any lands acquired by a local authority in pursuance of any powers in this Act contained and not required for the purpose for which they were acquired shall (unless the local government board otherwise direct) be sold at the best price that can be gotten for the same, and the proceeds of such sale shall be applied towards discharge, by means of a sinking fund or otherwise, of any principal monies which have been borrowed by such authority on the security of the fund or rate applicable by them for the general purposes of this Act, or if no such principal monies are outstanding shall be carried to the account of such fund or rate.

This section and ss. 176 and 177 are referred to in 42 & 43 Vict. c. 31, s. 2, sub-s. (2), *ante*, p. 264.

Regulations as to purchase of land.

176. With respect to the purchase of lands by a local authority for the purposes of this Act, the following regulation shall be observed; (that is to say),

(1.) "The Lands Clauses Consolidation Acts, 1845, 1860, and 1869," shall be incorporated with this Act, except the provisions relating to access to the special Act, and except section one hundred and twenty-seven of "The Lands Clauses Consolidation Act, 1845."

(2.) The local authority, before putting in force any of the powers of the said Lands Clauses Consolidation Acts with respect to the purchase and taking of lands otherwise than by agreement, shall

Publish once at the least in each of three consecutive weeks in the month of November, in some local newspaper circulated in their district, an advertisement describing shortly the nature of the undertaking in respect of which the lands are proposed to be taken, naming a place where a plan of the proposed undertaking may be seen at all reasonable hours, and stating the quantity of lands that they require; and shall further

Serve a notice in the month of December on every owner or reputed owner, lessee, or reputed lessee, and occupier of such lands, defining in each case the particular lands intended to be taken, and requiring an answer stating whether the person so served assents, dissents, or is neuter in respect of taking such lands:

(3.) On compliance with the provisions of this section with respect to advertisements and notices, the local authority may, if they think fit, present a petition under their seal to the local government board. The petition shall state the lands intended

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Part V.

to be taken, and the purposes for which they are required, and the names of the owners, lessees, and occupiers of lands who have assented, dissented or are neuter in respect of the taking such lands, or who have returned no answer to the notice; it shall pray that the local authority may, with reference to such lands, be allowed to put in force the powers of the said Lands Clauses Consolidation Acts with respect to the purchase and taking of lands otherwise than by agreement, and such prayer shall be supported by such evidence as the local government board requires:

(4.) On the receipt of such petition and on due proof of the proper advertisements having been published and notices served the local government board shall take such petition into consideration, and may either dismiss the same, or direct a local inquiry as to the propriety of assenting to the prayer of such petition; but until such inquiry has been made no provisional order shall be made affecting any lands without the consent of the owners, lessees, and occupiers thereof.

(5.) After the completion of such inquiry the local government board may, by provisional order, empower the local authority to put in force, with reference to the lands referred to in such order, the powers of the said Lands Clauses Consolidation Acts with respect to the purchase and taking of lands otherwise than by agreement, or any of them, and either absolutely or with such conditions and modifications as the board may think fit, and it shall be the duty of the local authority to serve a copy of any order so made in the manner and on the person in which and on whom notices in respect of such lands are required to be served:

Provided that the notices by this section required to be given in the months of November and December may be given in the months of September and October or of October and November, but in either of such last-mentioned cases an inquiry preliminary to the provisional order to which such notices refer shall not be held until the expiration of one month from the last day of the second of the two months in which the notices are given; and any notices or orders by this section required to be served on a number of persons having any right in, over, or on lands in common may be served on any three or more of such persons on behalf of all such persons.

See note to last section.

Power to let lands.

177. Any local authority may, with the consent of the local government board, let for any term any lands which they may possess, as and when they can conveniently spare the same.

See note to s. 175.

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Bye-laws.

Authentication and alteration of bye-laws.

182. All bye-laws made by a local authority under and for the purposes of this Act shall be under their common seal; and any such bye-law may be altered or repealed by a subsequent bye-law made pursuant to the provisions of this Act: provided that no bye-law made under this Act by a local authority shall be of any effect if repugnant to the laws of England or to the provisions of this Act.

This section and ss. 183 to 188 are referred to in 42 & 43 Vict. c. 31, s. 2, sub-s. (2), *ante*, p. 264.

Power to impose penalties on breach of bye-laws.

183. Any local authority may, by any bye-laws made by them under this Act, impose on offenders against the same such reasonable penalties as they think fit, not

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exceeding the sum of five pounds for each offence, and in the case of a continuing offence a further penalty not exceeding forty shillings for each day after written notice of the offence from the local authority; but all such bye-laws imposing any penalty shall be so framed as to allow of the recovery of any sum less than the full amount of the penalty.

Nothing in the provisions of any Act incorporated herewith shall authorise the imposition or recovery under any bye-laws made in pursuance of such provisions of any greater penalty than the penalties in this section specified.

See note to last section.

Confirmation of bye-laws.

184. Bye-laws made by a local authority under this Act shall not take effect unless and until they have been submitted to and confirmed by the local government board, which board is hereby empowered to allow or disallow the same as it may think proper; nor shall any such bye-laws be confirmed—

Unless notice of intention to apply for confirmation of the same has been given in one or more of the local newspapers circulated within the district to which such bye-laws relate, one month at least before the making of such application; and

Unless for one month at least before any such application a copy of the proposed bye-laws has been kept at the office of the local authority, and has been open during office hours thereat to the inspection of the ratepayers of the district to which such bye-laws relate, without fee or reward.

The clerk of the local authority shall, on the application of any such ratepayer, furnish him with a copy of such proposed bye-laws or any part thereof, on

payment of sixpence for every hundred words contained in such copy.

A bye-law required to be confirmed by the local government board shall not require confirmation, allowance, or approval by any other authority.

See note to s. 182.

Bye-laws to be printed, &c.

185. All bye-laws made by a local authority under this Act, or for purposes the same as or similar to those of this Act under any local Act, shall be printed and hung up in the office of such authority; and a copy thereof shall be delivered to any ratepayer of the district to which such bye-laws relate, on his application for the same; a copy of any bye-laws made by a rural authority shall also be transmitted to the overseers of every parish to which such bye-laws relate, to be deposited with the public documents of the parish, and to be open to the inspection of any ratepayer of the parish at all reasonable hours.

See note to s. 182.

Evidence of bye-laws.

186. A copy of any bye-laws made under this Act by a local authority (not being the council of a borough), signed and certified by the clerk of such authority to be a true copy and to have been duly confirmed, shall be evidence until the contrary is proved in all legal proceedings of the due making, confirmation, and existence of such bye-laws without further or other proof.

See note to s. 182.

Municipal corporation bye-laws as to nuisances.

187. Bye-laws made by the council of any borough under the provisions of section ninety of the Act of the sixth year of King William the Fourth, chapter seventy-six, for the prevention and suppression of certain nuisances, shall not be required to be sent to a secretary of state, nor shall they be subject to the disallowance

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in that section mentioned; but all the provisions of this Act relating to bye-laws shall apply to the bye-laws so made as if they were made under this Act.

See note to s. 182.

As to regulations of local authority.

188. The provisions of this Act relating to bye-laws shall not apply to any regulations which a local authority is by this Act authorised to make; nevertheless, any local authority may cause any regulations made by them under this Act to be published in such manner as they see fit.

See note to s. 182.

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Part VI.

PART VI.—RATING AND BORROWING POWERS, &c.

Expenses of Urban Authority and Urban Rates.

Mode of defraying expenses of urban authority.

207. All expenses incurred or payable by an urban authority in the execution of this Act, and not otherwise provided for, shall be charged on and defrayed out of the district fund and general district rate leviable by them under this Act, subject to the following exceptions; (namely),

That if in any district the expenses incurred by an urban authority (being the council of a borough) in the execution of the Sanitary Acts were at the time of the passing of this Act payable out of the borough fund, or borough rate, then the expenses incurred by that authority in the execution of this Act shall be charged on and defrayed out of the borough fund or borough rate; and

That if in any district the expenses incurred by an urban authority (being improvement commissioners) in the execution of the Sanitary Acts were at the time of the passing of this Act payable out of any

rate in the nature of a general district rate leviable by them as such commissioners throughout the whole of their district, then the expenses incurred by that authority in the execution of this Act shall be charged on and defrayed out of such rate; and for the purposes of this section the council of the borough of Folkestone shall be deemed to be improvement commissioners; and

That where at the time of the passing of this Act the expenses incurred by an urban authority in the execution of certain purposes of the Sanitary Acts were payable out of the borough fund and borough rate, and the expenses incurred by such authority in the execution of the other purposes of the said Acts were payable out of a rate or rates leviable by that authority throughout the whole of their district for paving, sewering, or other sanitary purposes, then the expenses incurred by that authority in the execution of the same or similar purposes respectively under this Act shall respectively be charged on and defrayed out of the borough fund and borough rate, and out of the rate or rates leviable as aforesaid.

See s. 8 of 50 & 51 Vict. c. 32, *ante*, p. 426.

Power in certain cases by provisional order to alter mode.

208. Where at the time of the passing of this Act the expenses incurred by an urban authority for sanitary purposes are payable otherwise than in the manner provided by the Local Government Acts, the local government board may, on the application of such authority, or of any ten persons rated to the relief of the poor within the district, declare by provisional order that the expenses of such authority incurred in the execution of this Act shall be defrayed out of a district fund and general district rate to be levied by them under

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this Act, subject to the provisions of this Act with respect to the mode of defraying in certain cases the expenses of the repair of highways.

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Borrowing Powers.

Power to borrow on credit of rates.

233. Any local authority may, with the sanction of the local government board, for the purpose of defraying any costs, charges, and expenses incurred or to be incurred by them in the execution of the Sanitary Acts or of this Act, borrow or re-borrow, and take up at interest, any sums of money necessary for defraying any such costs, charges, and expenses, or for discharging any such loans as aforesaid.

An urban authority may borrow or re-borrow any such sums on the credit of any fund or all or any rates or rate out of which they are authorised to defray expenses incurred by them in the execution of this Act, and for the purpose of securing the repayment of any sums so borrowed, with interest thereon, they may mortgage to the persons by or on behalf of whom such sums are advanced any such fund or rates or rate.

A rural authority may borrow or re-borrow any such sums, if applied or intended to be applied to general expenses of such authority, on the credit of the common fund out of which such expenses are payable, and if applied or intended to be applied to special expenses of such authority, on the credit of any rate or rates out of which such expenses are payable, and for the purpose of securing the repayment of any sums so borrowed, with interest thereon, they may mortgage to the persons by or on behalf of whom such sums are advanced any such fund, rate, or rates.

The borrowing powers given by ss. 233 to 239 are given to parish councils by the Local Government Act, 1894, s. 12, *ante*, p. 338.

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Part VI.

234. The exercise of the powers of borrowing conferred by this Act shall be subject to the following regulations; (namely),

Regulations as to exercise of borrowing powers.

(1.) Money shall not be borrowed except for permanent works (including under this expression any works of which the cost ought in the opinion of the local government board to be spread over a term of years):

(2.) The sum borrowed shall not at any time exceed, with the balances of all the outstanding loans contracted by the local authority under the Sanitary Acts and this Act, in the whole the assessable value for two years of the premises assessable within the district in respect of which such money may be borrowed:

(3.) Where the sum proposed to be borrowed with such balances (if any) would exceed the assessable value for one year of such premises, the local government board shall not give their sanction to such loan until one of their inspectors has held a local inquiry and reported to the said board:

(4.) The money may be borrowed for such time, not exceeding sixty years, as the local authority, with the sanction of the local government board, determine in each case; and, subject as aforesaid, the local authority shall either pay off the monies so borrowed by equal annual instalments of principal or of principal and interest, or they shall in every year set apart as a sinking fund, and accumulate in the way of compound interest by investing the same in the purchase of exchequer bills or other government securities, such sum as will with accumulations in the way of compound

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interest be sufficient, after payment of all expenses, to pay off the monies so borrowed within the period sanctioned:

(5.) A local authority may at any time apply the whole or any part of a sinking fund set apart under this Act in or towards the discharge of the monies for the repayment of which the fund has been established: provided that they pay into the fund in each year, and accumulate until the whole of the monies borrowed are discharged, a sum equivalent to the interest which would have been produced by the sinking fund or the part of the sinking fund so applied:

(6.) Where money is borrowed for the purpose of discharging a previous loan, the time for repayment of the money so borrowed shall not extend beyond the unexpired portion of the period for which the original loan was sanctioned, unless with the sanction of the local government board, and shall in no case be extended beyond the period of sixty years from the date of the original loan.

Where any urban authority borrow any money for the purpose of defraying private improvement expenses, or expenses in respect of which they have determined a part only of the district to be liable, it shall be the duty of such authority, as between the ratepayers of the district, to make good, so far as they can, the money so borrowed, as occasion requires, either out of private improvement rates, or out of a rate levied in such part of the district as aforesaid.

See note to last section.

Power to borrow on credit of sewage

235. Where any local authority are possessed of any land, works, or other property for the purposes of disposal of sewage pursuant to this Act, they may borrow

any monies on the credit of such lands, works, or other property, and may mortgage such lands, works, or other property to any person advancing such monies, in the same manner in all respects, as if they were the absolute owner, both at law and in equity, of the lands, works, or other property so mortgaged. The monies so borrowed shall be applied for purposes for which monies may be borrowed under this Act; but it shall not be in any way incumbent on the mortgagees to see to the application of such monies, nor shall they be responsible for any misapplication thereof.

The powers of borrowing conferred by this section shall, where the sums borrowed do not exceed three-fourths of the purchase-money of such lands (but not otherwise), be deemed to be distinct from and in addition to the general borrowing powers conferred on a local authority by this Act. Any local authority may pay out of any rates leviable by them for purposes of this Act the interest on any monies borrowed by such authority in pursuance of this section.

See note to s. 233.

Form of mortgage.

236. Every mortgage authorised to be made under this Act shall be by deed, truly stating the date, consideration, and the time and place of payment, and shall be sealed with the common seal of the local authority, and may be made according to the form contained in Schedule IV. to this Act, or to the like effect.

See note to s. 233.

Register of mortgages.

237. There shall be kept at the office of the local authority a register of the mortgages on each rate, and within fourteen days after the date of any mortgage an entry shall be made in the register of the number and

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date thereof, and of the names and description of the parties thereto, as stated in the deed. Every such register shall be open to public inspection during office hours at the said office, without fee or reward; and any clerk or other person having the custody of the same, refusing to allow such inspection, shall be liable to a penalty not exceeding five pounds.

See note to s. 233.

Transfer of mortgages.

238. Any mortgagee or other person entitled to any mortgage under this Act may transfer his estate and interest therein to any other person by deed duly stamped, truly stating its date and the consideration for the transfer; and such transfers may be according to the form contained in Schedule IV. to this Act, or to the like effect.

There shall be kept at the office of the local authority a register of the transfers of mortgage charged on each rate, and within thirty days after the date of such deed of transfer, if executed within the United Kingdom, or within thirty days after its arrival in the United Kingdom, if executed elsewhere, the same shall be produced to the clerk of the local authority, who shall, on payment of a sum not exceeding five shillings, cause an entry to be made in such register of its date, and of the names and description of the parties thereto, as stated in the transfer; and until such entry is made the local authority shall not be in any manner responsible to the transferee.

On the registration of any transfer the transferee, his executors or administrators, shall be entitled to the full benefit of the original mortgage and the principal and interest secured thereby; and any transferee may in like manner transfer his estate and interest in any such

mortgage; and no person except the last transferee, his executors or administrators, shall be entitled to release or discharge any such mortgage or any money secured thereby.

If the clerk of the local authority wilfully neglects or refuses to make in the register any entry by this section required to be made, he shall be liable to a penalty not exceeding twenty pounds.

See note to s. 233.

Receiver may be appointed in certain cases.

239. If at the expiration of six months from the time when any principal money or interest has become due on any mortgage of rates made under this Act, and after demand in writing, the same is not paid, the mortgagee or other person entitled thereto may, without prejudice to any other mode of recovery, apply for the appointment of a receiver to a court of summary jurisdiction; and such court may, after hearing the parties, appoint in writing under their hands and seals some person to collect and receive the whole or a competent part of the rates liable to the payment of the principal or interest in respect of which the application is made, until such principal or interest, or both, as the case may be, together with the costs of the application and of collection, are fully paid.

On such appointment being made all such rates, or such competent part thereof as aforesaid, shall be paid to the person appointed, and when so paid shall be so much money received by or to the use of the mortgagee or mortgagees of such rates, and shall be rateably apportioned between them:

Provided that no such application shall be entertained unless the sum or sums due and owing to the applicant amount to one thousand pounds, or unless a joint ap-

plication is made by two or more mortgagees or other persons to whom there may be due, after such lapse of time and demand as last aforesaid, monies collectively amounting to that sum.

See note to s. 233.

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AUDIT.

Audit of Accounts of Local Authorities.

Accounts of local authorities.

245. Accounts of the receipts and expenditure under this Act of every local authority shall be made up in such form and to such day in every year as the local government board may appoint.

Audit where urban authority are a town council.

246. Where an urban authority are the council of a borough, the accounts of the receipts and expenditure under this Act of such authority shall be audited and examined by the auditors of the borough, and shall be published in like manner, and at the same time as the municipal accounts, and the auditors shall proceed in the audit after like notice and in like manner, shall have like powers and authorities, and perform like duties, as in the case of auditing the municipal accounts.

Each of such auditors shall, in respect of each audit, be paid such reasonable remuneration, not being less than two guineas for every day in which they are employed in such audit, as such authority from time to time appoint. Any order of such authority for the payment of any money may be removed by certiorari, and like proceedings may be had thereon as under section forty-four of the Act of the first year of Her Majesty, chapter seventy-eight, with respect to orders of the council of a borough for payments out of the borough fund.

Audit where urban authority are not a town council.

247. Where an urban authority are not the council of a borough the following regulations with respect to audit shall be observed; (namely),

(1.) The accounts of the receipts and expenditure under this Act of such authority shall be audited and examined once in every year, as soon as can be after the twenty-fifth day of March, by the auditor of accounts relating to the relief of the poor [*for the union in which the district of such authority or the greater part thereof is situate, unless such auditor is a member of the authority whose accounts he is appointed to audit, in which case such accounts shall be audited by such auditor of any adjoining union as may from time to time be appointed by the local government board:*

[(2.) *There shall be paid to such auditor in respect of each audit under this Act, such reasonable remuneration, not being less than two guineas for every day in which he is employed in such audit, as such authority from time to time appoint, together with his expenses of travelling to and from the place of audit:*]

(3.) Before each audit such authority shall, after receiving from the auditor the requisite appointment, give at least fourteen days' notice of the time and place at which the same will be made, and of the deposit of accounts required by this section, by advertisement in some one or more of the local newspapers circulated in the district; and the production of the newspaper containing such notice shall be deemed to be sufficient proof of such notice on any proceeding whatsoever:

(4.) A copy of the accounts duly made up and balanced, together with all rate books, account books, deeds, contracts, accounts, vouchers, and receipts mentioned or referred to in such accounts, shall be deposited in the office of such authority, and be open,

38 & 39 Vict. c. 55. Part VI.

during office hours thereat, to the inspection of all persons interested for seven clear days before the audit, and all such persons shall be at liberty to take copies of or extracts from the same, without fee or reward; and any officer of such authority duly appointed in that behalf neglecting to make up such accounts and books, or altering such accounts and books, or allowing them to be altered when so made up, or refusing to allow inspection thereof, shall be liable to a penalty not exceeding five pounds:

(5.) For the purpose of any audit under this Act, every auditor may, by summons in writing, require the production before him of all books, deeds, contracts, accounts, vouchers, receipts, and other documents and papers which he may deem necessary, and may require any person holding or accountable for any such books, deeds, contracts, accounts, vouchers, receipts, documents, or papers to appear before him at any such audit or any adjournment thereof, and to make and sign a declaration as to the correctness of the same: and if any such person neglects or refuses so to do, or to produce any such books, deeds, contracts, accounts, vouchers, receipts, documents, or papers, or to make or sign such declaration, he shall incur for every neglect or refusal a penalty not exceeding forty shillings; and if he falsely or corruptly makes or signs any such declaration, knowing the same to be untrue in any material particular, he shall be liable to the penalties inflicted on persons guilty of wilful and corrupt perjury:

(6.) Any ratepayer or owner of property in the district may be present at the audit, and may make any objection to such accounts before the auditor; and such ratepayers and owners shall have the same right of appeal against allowances by an auditor as they have by law against disallowances:

(7.) Any auditor acting in pursuance of this section shall disallow every item of account contrary to law, and surcharge the same on the person making or authorising the making of the illegal payment, and shall charge against any person accounting the amount of any deficiency or loss incurred by the negligence or misconduct of that person, or of any sum which ought to have been but is not brought into account by that person, and shall in every such case certify the amount due from such person, and on application by any party aggrieved shall state in writing the reasons for his decision in respect of such disallowance or surcharge, and also of any allowance which he may have made:

(8.) Any person aggrieved by disallowance made may apply to the Court of Queen's Bench for a writ of certiorari to remove the disallowance into the said court, in the same manner and subject to the same conditions as are provided in the case of disallowances by auditors under the laws for the time being in force with regard to the relief of the poor; and the said court shall have the same powers with respect to allowances, disallowances, and surcharges under this Act as it has with respect to disallowances or allowances by the said auditors; or in lieu of such application any person so aggrieved may appeal to the local government board, which board shall have the same powers in the case of the appeal as it possesses in the case of appeals against allowances, disallowances and surcharges by the said poor law auditors:

(9.) Every sum certified to be due from any person by an auditor under this Act shall be paid by such person to the treasurer of such authority within fourteen days after the same has been so certified, unless there is an appeal against the decision; and if such sum is not so paid, and there is no such appeal, the auditor

38 & 39 Vict. c. 55. Part VI.

shall recover the same from the person against whom the same has been certified to be due by the like process and with the like powers as in the case of sums certified on the audit of the poor rate accounts, and shall be paid by such authority all such costs and expenses, including a reasonable compensation for loss of time incurred by him in such proceedings, as are not recovered by him from such person :

(10.) Within fourteen days after the completion of the audit, the auditor shall report on the accounts audited and examined, and shall deliver such report to the clerk of such authority, who shall cause the same to be deposited in their office, and shall publish an abstract of such accounts in some one or more of the local newspapers circulated in the district.

Where the provisions as to audit of any local Act constituting a board of improvement commissioners are repugnant to or inconsistent with those of this Act, the audit of the accounts of such improvement commissioners shall be conducted in all respects in accordance with the provisions of this Act.

Audit of accounts of rural authority.

248. The accounts under this Act of every rural authority shall be audited by the same persons and in every respect in the same manner as the accounts of guardians are audited under the Acts for the relief of the poor for the time being in force.

The accounts of the overseers collecting or paying any money for the purposes of this Act shall be audited in the same manner as the accounts of overseers collecting or paying any money for the purposes of the Acts relating to the relief of the poor for the time being in force.

An auditor shall, with respect to the accounts audited under this section, have the like powers and be subject

to the like obligations in every respect as in the case of an audit under the Acts relating to the relief of the poor, and any person aggrieved by the decision of the auditor shall have the like rights and remedies as in the case of such last-mentioned audit.

Taxation of bill of solicitor or attorney.

249. On the application of any local authority whose accounts are required by this Act to be audited to the clerk of the peace of the county in which the district of such authority is wholly or in part situated, the said clerk or his deputy shall tax any bill due to any solicitor or attorney in respect of legal business performed on behalf of such authority; and the allowance of any sum on such taxation shall be primâ facie evidence of the reasonableness of the amount, but not of the legality of the charge.

The clerk of the peace shall be allowed for such taxation a remuneration after the rate to be fixed by the master of the crown office, and declared by an order of the local government board.

If any such bill is not taxed by the clerk of the peace or some other duly authorised taxing officer before being presented to the auditors or auditor, the decision of the auditors or auditor upon the reasonableness and the legality of the charge shall be final.

Auditor to audit accounts of officers.

250. The accounts under this Act of officers or assistants of any local authority who are required to receive monies or goods on behalf of such authority shall be audited by the auditors or auditor of the accounts of such authority, with the same powers, incidents, and consequences as in the case of such last-mentioned accounts.

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38 & 39 Vict. c. 55.

Part X.

PART X.—MISCELLANEOUS AND TEMPORARY PROVISIONS.

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Provision where Improvement Act district or local government district becomes a borough.

310. Where after the passing of this Act a district or part of a district under the jurisdiction of improvement commissioners, or a district or part of a district under the jurisdiction of a local board, is constituted or included in a borough, all the powers, rights, duties, capacities, liabilities, obligations, and property exerciseable by, attaching to, or vested in such improvement commissioners or local board (as the case may be) under this Act, or under any local Act for purposes the same as or similar to those of this Act, or under any general Act of Parliament, within or for the benefit of such district or part of a district, shall pass to and be exerciseable by and vested in the council of such borough.

The transfer, by virtue of "The Public Health Act, 1872," of the powers, rights, duties, capacities, liabilities, obligations, and property of any local board or improvement commissioners to an urban sanitary authority, shall be deemed to have included all powers, rights, duties, capacities, liabilities, obligations, and property exerciseable by, attaching to, or vested in such local board or improvement commissioners as a burial board under any general Act of Parliament.

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Part XI.

PART XI.—SAVING CLAUSES AND REPEAL OF ACTS.

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Repeal of Acts.

Repeal of Acts in Schedule V.

343. The Acts specified in the first and second parts of Schedule V. to this Act are hereby repealed to the extent in the third column in the said parts of that

Schedule mentioned, with the following qualification; (that is to say,) 38 & 39 Vict. c. 55. Part XI.

That so much of the said Acts as is set forth in the third part of that Schedule shall be re-enacted in manner therein appearing, and shall be in force as if enacted in the body of this Act.

Provided also, that this repeal shall not affect—

(*a.*) Anything duly done or suffered under any enactment hereby repealed; or

(*b.*) Any right or liability acquired, accrued or incurred under any enactment hereby repealed; or

(*c.*) Any security given under any enactment hereby repealed; or

(*d.*) Any penalty, forfeiture or punishment incurred in respect of any offence committed against any enactment hereby repealed; or

(*e.*) Any investigation, legal proceeding, or remedy in respect of any such right, liability, security, penalty, forfeiture, or punishment as aforesaid; and any such investigation, legal proceeding, and remedy may be carried on as if this Act had not been passed.

SCHEDULE V.

PART III.

Part III.

11 & 12 Vict. c. 63, s. 83.

As to interments within churches.

No vault or grave shall be constructed or made within the walls of or underneath any church or other place of public worship built in any urban district after the thirty-first day of August, one thousand eight hundred and forty-eight; and whosoever shall bury, or cause, permit, or suffer to be buried, any corpse or coffin in any vault or grave constructed or made contrary to this enactment, shall for every such offence be liable to a penalty not exceeding fifty pounds, which may be

38 & 39 Vict. c. 55. Part III.

recovered by any person, with full costs of suit, in an action of debt.

See *Re Kerr*, [1894] P. 284, set out *supra*, p. 517.

21 & 22 Vict. c. 98, s. 49.

Local board to be burial board in certain cases.

When a vestry of any parish comprised in a local government district resolves to appoint a burial board, the local board may at the option of the vestry be the burial board for such parish, and all expenses incurred by such burial board shall be defrayed out of a rate to be levied in such parish in the same manner as a general district rate.

Provided, that if such parish has been declared a ward for the election of members of the local board, such members shall form the burial board for the parish, and shall be deemed to be a burial board elected under the Burial Acts for the time being in force.

24 & 25 Vict. c. 61, s. 21.

Urban authorities may repair fences surrounding burial grounds.

Any urban authority constituted a burial board may from time to time repair and uphold the fences surrounding any burial ground which has been discontinued as such within their jurisdiction, or take down such fences and substitute others in lieu thereof, and shall from time to time take the necessary steps for preventing the desecration of such burial ground and placing it in a proper sanitary condition; and they may from time to time pass bye-laws (subject to the provisions of this Act) for the preservation and regulation of all burial grounds within their jurisdiction; and the expense of carrying this section into execution may be defrayed out of any rates authorised to be levied by any urban authority constituted a burial board.

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29 & 30 Vict. c. 90, s. 44.

Power to burial boards in certain cases to transfer their powers to urban authority.

When the district of a burial board is included in or conterminous with the district of an urban authority, the burial board may, by resolution of the vestry, and by agreement of the burial board and urban authority, transfer to the urban authority all their estate, property, rights, powers, duties, and liabilities, and from and after such transfer, the urban authority shall have all such estate, property, rights, powers, duties, and liabilities as if they had been duly appointed a burial board under the Burial Acts for the time being in force.

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APPENDIX.

LANDS CLAUSES ACT, 1845.

8 VICT. C. 18 (*a*).

8 Vict. c. 18.

An Act for consolidating in one Act certain Provisions usually inserted in Acts authorising the taking of Lands for Undertakings of a Public Nature. [8th May, 1845.]

. . . THIS Act shall apply to every undertaking authorised by any Act which shall hereafter be passed, and which shall authorise the purchase or taking of lands for such undertaking, and this Act shall be incorporated with such Act; and all the clauses and provisions of this Act, save so far as they shall be expressly varied or excepted by any such Act, shall apply to the undertaking authorised thereby, so far as the same shall be applicable to such undertaking, and shall, as well as the clauses and provisions of every other Act which shall be incorporated with such Act, form part of such Act, and be construed together therewith as forming one Act.

Act to apply to all undertakings authorised by Acts hereafter to be passed.

And with respect to the construction of this Act and of Acts to be incorporated therewith, be it enacted as follows:

Interpretations in this Act: "Special Act:"

II. The expression "the special Act," used in this Act, shall be construed to mean any Act which shall be hereafter passed which shall authorise the taking of lands for the undertaking to which the same relates, and with which this Act shall be so incorporated as aforesaid; and the word "prescribed," used in this Act in reference to any matter herein stated, shall be construed to refer to such matter as the same shall be prescribed or provided for in the special Act, and the sentence in which such word shall occur shall be construed as

"Prescribed:"

(*a*) See 15 & 16 Vict. c. 85, s. 27, p. 117, which incorporates this Act. See also 44 & 45 Vict. c. 34, s. 9, *ante*, p. 410.

8 Vict. c. 18.

if, instead of the word "prescribed," the expression "prescribed for that purpose in the special Act" had been used;

"The works:"

and the expression "the works" or "the undertaking" shall mean the works or undertaking, of whatever nature, which shall by the special Act be authorised to be executed; and

"Promoters of the undertaking."

the expression "the promoters of the undertaking" shall mean the parties, whether company, undertakers, commissioners, trustees, corporations, or private persons, by the special Act empowered to execute such works or undertaking.

Interpretations in this and the special Act.

III. The following words and expressions, both in this and the special Act, shall have the several meanings hereby assigned to them, unless there be something either in the subject or context repugnant to such construction; (that is to say,)

Number:

Words importing the singular number only shall include the plural number, and words importing the plural number only shall include the singular number:

Gender:

Words importing the masculine gender only shall include females:

"Lands:"

The word "lands" shall extend to messuages, lands, tenements, and hereditaments of any tenure:

"Lease:"

The word "lease" shall include an agreement for a lease:

"Month:"

The word "month" shall mean calendar month:

"Superior courts:"

The expression "superior courts" shall mean Her Majesty's superior Courts of Record at Westminster or Dublin, as the case may require:

"Oath:"

The word "oath" shall include affirmation in the case of Quakers, or other declaration lawfully substituted for an oath in the case of any other persons exempted by law from the necessity of taking an oath:

"County:"

The word "county" shall include any riding or other like division of a county, and shall also include county of a city or county of a town:

"The sheriff:"

The word "sheriff" shall include under sheriff, or other legally competent deputy: and where any matter in relation to any lands is required to be done by any sheriff or by any clerk of the peace, the expression "the sheriff," or

"The clerk of the peace:"

the expression "the clerk of the peace," shall in such case be construed to mean the sheriff or the clerk of the peace of the county, city, borough, liberty, cinque port, or place where such lands shall be situate: and if the lands in

question, being the property of one and the same party, be situate not wholly in one county, city, borough, liberty, cinque port, or place, the same expression shall be construed to mean the sheriff or clerk of the peace of any county, city, borough, liberty, cinque port, or place where any part of such lands shall be situate:

"Justices:" The word "justices" shall mean justices of the peace acting for the county, city, liberty, cinque port, or place where the matter requiring the cognizance of any such justice shall arise, and who shall not be interested in the matter; and where such matter shall arise in respect of lands being the property of one and the same party, situate not wholly in any one county, city, borough, liberty, cinque port, or place, the same shall mean a justice acting for the county, city, borough, liberty, cinque port, or place where any part of such lands shall be situate, and who shall not be interested in such matter; and where any matter shall be authorised or required to be done by two justices, the expression "two justices" shall be understood to mean two justices assembled and acting together:

"Two justices:"

"Owner:" Where, under the provisions of this or the special Act, or any Act incorporated therewith, any notice shall be required to be given to the owner of any lands, or where any Act shall be authorised or required to be done with the consent of any such owner, the word "owner" shall be understood to mean any person or corporation who, under the provisions of this or the special Act, would be enabled to sell and convey lands to the promoters of the undertaking:

"The bank:" The expression "the bank" shall mean the Bank of England where the same shall relate to monies to be paid or deposited in respect of lands situate in England, and shall mean the Bank of Ireland where the same shall relate to monies to be paid or deposited in respect of land situate in Ireland.

Short title of the Act. IV. In citing this Act in other Acts of Parliament, and in legal instruments, it shall be sufficient to use the expression "The Lands Clauses Consolidation Act, 1845."

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8 Vict. c. 18.

And with respect to the purchase of lands by agreement, be it enacted as follows:

Purchase of lands by agreement.

Power to purchase lands by agreement.

VI. Subject to the provisions of this and the special Act, it shall be lawful for the promoters of the undertaking to agree with the owners of any lands by the special Act authorised to be taken, and which shall be required for the purposes of such Act, and with all parties having any estate or interest in such lands, or by this or the special Act enabled to sell and convey the same, for the absolute purchase, for a consideration in money, of any such lands, or such parts thereof, as they shall think proper, and of all estates and interests in such lands of what kind soever.

Parties under disability enabled to sell and convey.

VII. It shall be lawful for all parties, being seised, possessed of, or entitled to any such lands, or any estate or interest therein, to sell and convey or release the same to the promoters of the undertaking, and to enter into all necessary agreements for that purpose; and particularly it shall be lawful for all or any of the following parties so seised, possessed or entitled as aforesaid so to sell, convey, or release; (that is to say,) all corporations, tenants in tail or for life, married women seised in their own right or entitled to dower, guardians, committees of lunatics and idiots, trustees or feoffees in trust for charitable or other purposes, executors and administrators, and all parties for the time being entitled to the receipt of the rents and profits of any such lands in possession or subject to any estate in dower, or to any lease for life, or for lives and years, or for years, or any less interest; and the power so to sell and convey or release as aforesaid may lawfully be exercised by all such parties, other than married women entitled to dower, or lessees for life, or for lives and years, or for years, or for any less interest, not only on behalf of themselves, and their respective heirs, executors, administrators, and successors, but also for and on behalf of every person entitled in reversion, remainder, or expectancy after them, or in defeasance of the estates of such parties, and as to such married women, whether they be of full age or not, as if they were sole and of full age, and as to such guardians on behalf of their wards, and as to such committees on behalf of the lunatics and idiots of whom they are the committees respectively, and that to the same extent as such wives, wards,

lunatics, and idiots, respectively could have exercised the same power under the authority of this or the special Act if they had respectively been under no disability, and as to such trustees, executors, and administrators, on behalf of their cestui que trusts, whether infants, issue unborn, lunatics, femes covert, or other persons, and that to the same extent as such cestui que trusts respectively could have exercised the same powers under the authority of this and the special Act if they had respectively been under no disability. 8 Vict. c. 18.

VIII. The power hereinafter given to enfranchise copyhold lands, as well as every other power required to be exercised by the lord of any manor, pursuant to the provisions of this or the special Act, or any Act incorporated therewith, and the power to release lands from any rent-charge or incumbrance, and to agree for the apportionment of any such rent-charge or incumbrance, shall extend to and may lawfully be exercised by every party hereinbefore enabled to sell and convey or release lands to the promoters of the undertaking. Parties under disability to exercise other powers.

IX. The purchase money or compensation to be paid for any lands to be purchased or taken from any party under any disability or incapacity, and not having power to sell or convey such lands except under the provisions of this or the special Act, and the compensation to be paid for any permanent damage or injury to any such lands, shall not, except where the same shall have been determined by the verdict of a jury, or by arbitration, or by the valuation of a surveyor appointed by two justices under the provision hereinafter contained, be less than shall be determined by the valuation of two able practical surveyors, one of whom shall be nominated by the promoters of the undertaking, and the other by the other party, and if such two surveyors cannot agree in the valuation, then by such third surveyor as any two justices shall upon application of either party, after notice to the other party, for that purpose nominate; and each of such two surveyors, if they agree, or if not, then the surveyor nominated by the said justices, shall annex to the valuation a declaration in writing, subscribed by them or him, of the correctness thereof; and all such purchase money or compensation shall be deposited in the bank for the benefit of the parties interested, in manner hereinafter mentioned. Amount of compensation in case of parties under disability to be ascertained by valuation and paid into the bank.

8 Vict. c. 18.

Where vendor absolutely entitled, lands may be sold on chief rents.

X. It shall be lawful for any person seised in fee of or entitled to dispose of absolutely for his own benefit any lands authorised to be purchased for the purposes of the special Act to sell and convey such lands or any part thereof unto the promoters of the undertaking, in consideration of an annual rent-charge payable by the promoters of the undertaking, but, except as aforesaid, the consideration to be paid for the purchase of any such lands, or for any damage done thereto, shall be in a gross sum (*a*).

Payment of rents may be charged on tolls.

XI. The yearly rents reserved by any such conveyance shall be charged on the tolls or rates, if any, payable under the special Act, and shall be otherwise secured in such manner as shall be agreed between the parties, and shall be paid by the promoters of the undertaking as such rents become payable; and if at any time any such rents be not paid within thirty days after they so become payable, and after demand thereof in writing, the person to whom any such rents shall be payable may either recover the same from the promoters of the undertaking, with costs of suit, by action of debt in any of the superior courts, or it shall be lawful for him to levy the same by distress of the goods and chattels of the promoters of the undertaking (*a*).

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Municipal corporations not to sell without the approbation of the Treasury.

XV. Nothing in this or the special Act contained shall enable any municipal corporation to sell for the purposes of the special Act, without the approbation of the Treasury, any lands which they could not have sold without such approbation before the passing of the special Act, other than such lands as the company are by the powers of this or the special Act empowered to purchase or take compulsorily.

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Application of compensation.

And with respect to the purchase money or compensation coming to parties having limited interests, or prevented from treating, or not making title, be it enacted as follows:

Purchase money payable to parties under disability amounting to 200*l.* to

LXIX. If the purchase money or compensation which shall be payable in respect of any lands or any interest therein, purchased or taken by the promoters of the undertaking from any corporation, tenant for life or in tail, married woman

(*a*) Sects. 10 and 11 are amended by 23 & 24 Vict. c. 106, ss. 1-3.

seised in her own right or entitled to dower, guardian, committee of lunatic or idiot, trustee, executor, or administrator, or person having a partial or qualified interest only in such lands, and not entitled to sell or convey the same except under the provisions of this or the special Act, or the compensation to be paid for any permanent damage to any such lands, amount to or exceed the sum of two hundred pounds, the same shall be paid into the bank, in the name and with the privity of the Accountant-General of the Court of Chancery, to be placed to the account there of such Accountant-General *ex parte* the promoters of the undertaking (describing them by their proper name), in the matter of the special Act (citing it), pursuant to the method prescribed by any Act for the time being in force for regulating monies paid into the said courts; and such monies shall remain so deposited until the same be applied to some one or more of the following purposes; (that is to say),

Money to be deposited in the bank.

In the purchase or redemption of the land-tax, or the discharge of any debt or incumbrance affecting the land in respect of which such money shall have been paid or affecting other lands settled therewith to the same or the like uses, trusts, or purposes; or

Application of monies deposited

In the purchase of other lands, to be conveyed, limited, and settled upon the like uses, trusts, and purposes, and in the same manner, as the lands in respect of which such money shall have been paid stood settled; or

If such money shall be paid in respect of any buildings taken under the authority of this or the special Act, or injured by the proximity of the works, in removing or replacing such buildings, or substituting others in their stead, in such manner as the Court of Chancery shall direct; or

In payment to any party becoming absolutely entitled to such money.

LXX. Such money may be so applied as aforesaid upon an order of the Court of Chancery made on the petition of the party who would have been entitled to the rents and profits of the lands in respect of which such money shall have been deposited; and until the money can be so applied it may, upon the like order, be invested by the said Accountant-General

Order for application and investment meanwhile.

8 Vict. c. 18.

in the purchase of three per centum consolidated or three per centum reduced bank annuities, or in government or real securities, and the interest, dividends, and annual proceeds thereof paid to the party who would for the time being have been entitled to the rents and profits of the lands.

Sums from 20*l.* to 200*l.* to be deposited or paid to trustees.

LXXI. If the purchase money or compensation shall not amount to the sum of two hundred pounds and shall exceed the sum of twenty pounds, the same shall either be paid into the bank, and applied in the manner hereinbefore directed with respect to sums amounting to or exceeding two hundred pounds, or the same may lawfully be paid to two trustees, to be nominated by the parties entitled to the rents or profits of the lands in respect whereof the same shall be payable, such nomination to be signified by writing under the hands of the party so entitled; and in case of the coverture, infancy, lunacy, or other incapacity of the parties entitled to such monies, such nomination may lawfully be made by their respective husbands, guardians, committees, or trustees; but such last-mentioned application of the monies shall not be made unless the promoters of the undertaking approve thereof and of the trustees named for the purpose; and the money so paid to such trustees, and the produce arising therefrom, shall be by such trustees applied in the manner hereinbefore directed with respect to money paid into the bank, but it shall not be necessary to obtain any order of the court for that purpose.

Sums not exceeding 20*l.* to be paid to parties.

LXXII. If such money shall not exceed the sum of twenty pounds, the same shall be paid to the parties entitled to the rents and profits of the lands in respect whereof the same shall be payable, for their own use and benefit, or in case of the coverture, infancy, idiotcy, lunacy, or other incapacity of any such parties, then such money shall be paid for their use to the respective husbands, guardians, committees, or trustees of such persons.

All sums payable under contract with persons not absolutely entitled to be paid into bank.

LXXIII. All sums of money exceeding twenty pounds which may be payable by the promoters of the undertaking in respect of the taking, using, or interfering with any lands, under a contract or agreement with any person who shall not be entitled to dispose of such lands or of the interest therein contracted to be sold by him absolutely for his own benefit, shall be paid into the bank or to trustees in manner aforesaid;

and it shall not be lawful for any contracting party not entitled as aforesaid to retain to his own use any portion of the sums so agreed or contracted to be paid for or in respect of the taking, using, or interfering with any such lands, or in lieu of bridges, tunnels, or other accommodation works, or for assenting to or not opposing the passing of the bill authorising the taking of such lands, but all such monies shall be deemed to have been contracted to be paid for and on account of the several parties interested in such lands as well in possession as in remainder, reversion, or expectancy: Provided always, that it shall be in the discretion of the Court of Chancery or the said trustees, as the case may be, to allot to any tenant for life or for any other partial or qualified estate, for his own use, a portion of the sum so paid, into the bank or to such trustees as aforesaid, as compensation for any injury, inconvenience, or annoyance which he may be considered to sustain, independently of the actual value of the lands to be taken, and of the damage occasioned to the lands held therewith, by reason of the taking of such lands and the making of the works.

Court of Chancery may direct application of money in respect of leases or reversions as they may think just.

LXXIV. Where any purchase money or compensation paid into the bank under the provisions of this or the special Act shall have been paid in respect of any lease for a life or lives or years, or for a life or lives and years, or any estate in lands less than the whole fee simple thereof, or of any reversion dependent on any such lease or estate, it shall be lawful for the Court of Chancery, on the petition of any party interested in such money, to order that the same shall be laid out, invested, accumulated, and paid in such manner as the said court may consider will give to the parties interested in such manner the same benefit therefrom as they might lawfully have had from the lease, estate, or reversion in respect of which such money shall have been paid, or as near thereto as may be.

Upon deposit being made the owners of the lands to convey, or in default the lands to vest in the promoters

LXXV. Upon deposit in the bank in manner hereinbefore provided of the purchase money or compensation agreed or awarded to be paid in respect of any lands purchased or taken by the promoters of the undertaking under the provisions of this or the special Act, or any Act incorporated therewith, the owner of such lands, including in such term all parties by this Act enabled to sell or convey lands, shall, when required so to

8 Vict. c. 18.

of the undertaking, upon deed poll being executed.

do by the promoters of the undertaking, duly convey such lands to the promoters of the undertaking, or as they shall direct; and in default thereof, or if he fail to adduce a good title to such lands to their satisfaction, it shall be lawful for the promoters of the undertaking, if they think fit, to execute a deed poll under their common seal if they be a corporation, or if they be not a corporation under the hands and seals of the promoters or any two of them, containing a description of the lands in respect of which such default shall be made, and reciting the purchase or taking thereof by the promoters of the undertaking, and the names of the parties from whom the same were purchased or taken, and the deposit made in respect thereof, and declaring the fact of such default having been made; and such deed poll shall be stamped with the stamp duty which would have been payable upon a conveyance to the promoters of the undertaking of the lands described therein; and thereupon all the estate and interest in such lands of or capable of being sold and conveyed by the party as between whom and the promoters of the undertaking such agreement shall have been come to, or as between whom and the promoters of the undertaking such purchase money or compensation shall have been determined by a jury, or by arbitrators, or by a surveyor appointed by two justices, as herein provided, and shall have been deposited as aforesaid, shall vest absolutely in the promoters of the undertaking, and as against such parties, and all parties on behalf of whom they are hereinbefore enabled to sell and convey, the promoters of the undertaking shall be entitled to immediate possession of such lands.

Where parties refuse to convey, or do not show title, or cannot be found, the purchase money to be deposited.

LXXVI. If the owner of any such lands purchased or taken by the promoters of the undertaking, or of any interest therein, on tender of the purchase money or compensation either agreed or awarded to be paid in respect thereof, refuse to accept the same, or neglect or fail to make out a title to such lands, or to the interest therein claimed by him, to the satisfaction of the promoters of the undertaking, or if he refuse to convey or release such lands as directed by the promoters of the undertaking, or if any such owner be absent from the kingdom, or cannot, after diligent inquiry, be found, or fail to appear on the inquiry before a jury, as herein provided for, it shall be

lawful for the promoters of the undertaking to deposit the purchase money or compensation payable in respect of such lands, or any interest therein, in the bank, in the name and with the privity of the Accountant-General of the Court of Chancery in England or the Court of Exchequer in Ireland, to be placed, except in the cases herein otherwise provided for, to his account there, to the credit of the parties interested in such lands (describing them, so far as the promoters of the undertaking can do), subject to the control and disposition of the said court. 8 Vict. c. 18.

LXXVII. Upon any such deposit of money as last aforesaid being made, the cashier of the bank shall give to the promoters of the undertaking, or to the party paying in such money by their direction, a receipt for such money, specifying therein for what and for whose use (described as aforesaid) the same shall have been received, and in respect of what purchase the same shall have been paid in; and it shall be lawful for the promoters of the undertaking, if they think fit, to execute a deed poll, under their common seal if they be a corporation, or if they be not a corporation under the hands and seals of the said promoters or any two of them, containing a description of the lands in respect whereof such deposits shall have been made, and declaring the circumstances under which and the names of the parties to whose credit such deposit shall have been made, and such deed poll shall be stamped with the stamp duty which would have been payable upon a conveyance to the promoters of the undertaking of the lands described therein; and thereupon all the estate and interest in such lands of the parties for whose use and in respect whereof such purchase money or compensation shall have been deposited shall vest absolutely in the promoters of the undertaking, and as against such parties they shall be entitled to immediate possession of such lands. Upon deposit being made a receipt to be given, and the lands to vest upon a deed poll being executed.

LXXVIII. Upon the application by petition of any party making claim to the money so deposited as last aforesaid, or any part thereof, or to the lands in respect whereof the same shall have been so deposited, or any part of such lands, or any interest in the same, the said Court of Chancery may, in a summary way, as to such court shall seem fit, order such money to be laid out or invested in the public funds, or may Application of monies so deposited.

8 Vict. c. 18.

order distribution thereof, or payment of the dividends thereof, according to the respective estates, titles, or interests of the parties making claim to such money or lands, or any part thereof, and may make such other order in the premises as to such court shall seem fit.

Party in possession to be deemed the owner.

LXXIX. If any question arise respecting the title to the lands in respect whereof such monies shall have been so paid or deposited as aforesaid, the parties respectively in possession of such lands, as being the owners thereof, or in receipt of the rents of such lands, as being entitled thereto at the time of such lands being purchased or taken, shall be deemed to have been lawfully entitled to such lands, until the contrary be shown to the satisfaction of the court; and unless the contrary be shown as aforesaid, the parties so in possession, and all parties claiming under them, or consistently with their possession, shall be deemed entitled to the money so deposited, and to the dividends or interests of the annuities or securities purchased therewith, and the same shall be paid and applied accordingly.

Costs in cases of money deposited.

LXXX. In all cases of monies deposited in the bank under the provisions of this or the special Act, or any Act incorporated therewith, except where such monies shall have been so deposited by reason of the wilful refusal of any party entitled thereto to receive the same, or to convey or release the lands in respect whereof the same shall be payable, or by reason of the wilful neglect of any party to make out a good title to the land required, it shall be lawful for the Court of Chancery to order the costs of the following matters, including therein all reasonable charges and expenses incident thereto, to be paid by the promoters of the undertaking; (that is to say,) the costs of the purchase or taking of the lands, or which shall have been incurred in consequence thereof, other than such costs as are herein otherwise provided for, and the costs of the investment of such monies in government or real securities, and of the reinvestment thereof in the purchase of other lands, and also the costs of obtaining the proper orders for any of the purposes aforesaid, and of the orders for the payment of the dividends and interest of the securities upon which such monies shall be invested, and for the payment out of court of the principal of such monies or of the securities whereon the same shall be

invested, and of all proceedings relating thereto, except such as are occasioned by litigation between adverse claimants: Provided always, that the costs of one application only for re-investment in land shall be allowed, unless it shall appear to the Court of Chancery that it is for the benefit of the parties interested in the said monies that the same should be invested in the purchase of lands in different sums, and at different times, in which case it shall be lawful for the court, if it think fit, to order the costs of any such investments to be paid by the promoters of the undertaking. 8 Vict. c. 18.

And with respect to the conveyances of lands, be it enacted as follows: *Conveyances.*

LXXXI. Conveyances of lands to be purchased under the provisions of this or the special Act, or any Act incorporated therewith, may be according to the forms in the schedules (A) and (B) respectively to this Act annexed, or as near thereto as the circumstances of the case will admit, or by deed in any other form in which the promoters of the undertaking may think fit, and all conveyances made according to the forms in the said schedules, or as near thereto as the circumstances of the case will admit, shall be effectual to vest the lands thereby conveyed in the promoters of the undertaking, and shall operate to merge all terms of years attendant by express declaration or by construction of law on the estate or interest so thereby conveyed, and to bar and to destroy all such estates tail, and all other estates, rights, titles, remainders, reversions, limitations, trusts, and interests whatsoever of and in the lands comprised in such conveyances which shall have been purchased or compensated for by the consideration therein mentioned; but although terms of years be thereby merged they shall in equity afford the same protection as if they had been kept on foot and assigned to a trustee for the promoters of the undertaking, to attend the reversion and inheritance. Form of conveyances.

LXXXII. The costs of all such conveyances shall be borne by the promoters of the undertaking, and such costs shall include all charges and expenses incurred, on the part as well of the seller as of the purchaser, of all conveyances and assurances of any such lands, and of any outstanding terms or interests therein, and of deducing, evidencing, and verifying the title to such lands, terms, or interests, and of making out Costs of conveyances.

8 Vict. c. 18.

and furnishing such abstracts and attested copies as the promoters of the undertaking may require, and all other reasonable expenses incident to the investigation, deduction, and verification of such title.

Taxation of costs of conveyances.

LXXXIII. If the promoters of the undertaking and the party entitled to any such costs shall not agree as to the amount thereof, such costs shall be taxed by one of the taxing-masters of the Court of Chancery upon an order of the same court, to be obtained upon petition in a summary way by either of the parties; and the promoters of the undertaking shall pay what the said master shall certify to be due in respect of such costs to the party entitled thereto, or in default thereof the same may be recovered in the same way as any other costs payable under an order of the said court, or the same may be recovered by distress in the manner hereinbefore provided in other cases of costs; and the expense of taxing such costs shall be borne by the promoters of the undertaking, unless upon such taxation one-sixth part of the amount of such costs shall be disallowed, in which case the costs of such taxation shall be borne by the party whose costs shall be so taxed, and the amount thereof shall be ascertained by the said master, and deducted by him accordingly in his certificate of such taxation.

Entry on lands.

And with respect to the entry upon lands by the promoters of the undertaking, be it enacted as follows:

Payment of price to be made previous to entry, except to survey, &c.

LXXXIV. The promoters of the undertaking shall not, except by consent of the owners and occupiers, enter upon any lands which shall be required to be purchased or permanently used for the purposes and under the powers of this or the special Act, until they shall either have paid to every party having any interest in such lands, or deposited in the bank, in the manner herein mentioned, the purchase money or compensation agreed or awarded to be paid to such parties respectively for their respective interest therein: Provided always, that for the purpose merely of surveying and taking levels of such lands, and of probing or boring to ascertain the nature of the soil, and of setting out the line of the works, it shall be lawful for the promoters of the undertaking, after giving not less than three nor more than fourteen days' notice to the owners or occupiers thereof, to enter upon such lands without previous consent, making compensation for any damage thereby occasioned to the owners or occupiers thereof.

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Promoters to be allowed to enter on lands before purchase, on making deposit by way of security, and giving bond.

LXXXV. Provided also, that if the promoters of the undertaking shall be desirous of entering upon and using any such lands before an agreement shall have been come to or an award made or verdict given for the purchase money or compensation to be paid by them in respect of such lands, it shall be lawful for the promoters of the undertaking to deposit in the bank by way of security, as hereinafter mentioned, either the amount of purchase money or compensation claimed by any party interested in or entitled to sell and convey such lands, and who shall not consent to such entry, or such a sum as shall, by a surveyor appointed by two justices in the manner hereinbefore provided in the case of parties who cannot be found, be determined to be the value of such lands or of the interest therein which such party is entitled to or enabled to sell and convey, and also to give to such party a bond under the common seal of the promoters, if they be a corporation, or if they be not a corporation, under the hands and seals of the said promoters or any two of them, with two sufficient sureties, to be approved of by two justices, in case the parties differ, in a penal sum equal to the sum so to be deposited, conditioned for payment to such party, or for deposit in the bank for the benefit of the parties interested in such lands, as the case may require, under the provisions herein contained, of all such purchase money or compensation as may in manner hereinbefore provided be determined to be payable by the promoters of the undertaking in respect of the land so entered upon, together with interest thereon at the rate of five pounds per centum per annum from the time of entering on such lands until such purchase money or compensation shall be paid to such party, or deposited in the bank for the benefit of the parties interested in such lands, under the provisions herein contained; and upon such deposit by way of security being made as aforesaid, and such bond being delivered or tendered to such non-consenting party as aforesaid, it shall be lawful for the promoters of the undertaking to enter upon and use such lands, without having first paid or deposited the purchase money or compensation in other cases required to be paid or deposited by them before entering upon any lands to be taken by them under the provisions of this or the special Act.

Upon deposit being

LXXXVI. The money so to be deposited as last aforesaid shall be paid into the bank in the name and with the privity

8 Vict. c. 18.

of the Accountant-General of the Court of Chancery, to be placed to his account there to the credit of the parties interested in or entitled to sell and convey the land so to be entered upon, and who shall not have consented to such entry, subject to the control and disposition of the said court; and upon such deposit being made the cashier of the bank shall give to the promoters of the undertaking, or to the party paying in such money by their direction, a receipt for such money, specifying therein for what purpose and to whose credit the same shall have been paid in.

made, cashier to give receipt.

Deposit to remain as a security, and to be applied under the direction of the court.

LXXXVII. The money so deposited as last aforesaid shall remain in the bank, by way of security to the parties whose lands shall so have been entered upon for the performance of the conditions of the bond to be given by the promoters of the undertaking, as hereinbefore mentioned, and the same may, on the application by petition of the promoters of the undertaking, be ordered to be invested in bank annuities or government securities, and accumulated; and upon the condition of such bond being fully performed it shall be lawful for the Court of Chancery, upon a like application, to order the money so deposited, or the funds in which the same shall have been invested, together with the accumulation thereof, to be repaid or transferred to the promoters of the undertaking, or if such condition shall not be fully performed it shall be lawful for the said court to order the same to be applied in such manner as it shall think fit for the benefit of the parties for whose security the same shall so have been deposited.

The company may pay the deposit money into the bank by way of security during the time that the office of the accountant-general is closed.

LXXXVIII. If at any time the company be unable, by reason of the closing of the office of the Accountant-General of the Court of Chancery, to obtain his authority in respect of the payment of any sum of money so authorised to be deposited in the bank by way of security as aforesaid, it shall be lawful for the company to pay into the bank, to the credit of such party or matter as the case may require (subject nevertheless to being dealt with as hereinafter provided, and not otherwise), such sum of money as the promoters of the undertaking shall, by some writing signed by their secretary or solicitors for the time being, addressed to the bank in that behalf, request, and upon any such payment being made the cashier of the bank shall give a certificate thereof; and

in every such case, within ten days after the reopening of the said Accountant-General's office, the solicitor for the promoters of the undertaking shall there bespeak the direction for the payment of such sum into the name of the Accountant-General, and upon production of such direction at the Bank of England the money so previously paid in shall be placed to the credit of the said Accountant-General accordingly, and the receipt for the said payment to be given to the party making the same in the usual way, for the purpose of being filed at the report office.

Penalty on the promoters of the undertaking entering upon lands without consent before payment of the purchase money.

LXXXIX. If the promoters of the undertaking or any of their contractors shall, except as aforesaid, wilfully enter upon and take possession of any lands which shall be required to be purchased or permanently used for the purposes of the special Act, without such consent as aforesaid, or without having made such payment for the benefit of the parties interested in the lands, or such deposit by way of security as aforesaid, the promoters of the undertaking shall forfeit to the party in possession of such lands the sum of ten pounds, over and above the amount of any damage done to such lands by reason of such entry and taking possession as aforesaid, such penalty and damage respectively to be recovered before two justices; and if the promoters of the undertaking or their contractors shall, after conviction in such penalty as aforesaid, continue in unlawful possession of any such lands, the promoters of the undertaking shall be liable to forfeit the sum of twenty-five pounds for every day they or their contractors shall so remain in possession as aforesaid, such penalty to be recoverable by the party in possession of such lands, with costs, by action in any of the superior courts: Provided always, that nothing herein contained shall be held to subject the promoters of the undertaking to the payment of any such penalties as aforesaid, if they shall *bonâ fide* and without collusion have paid the compensation agreed or awarded to be paid in respect of the said lands to any person whom the promoters of the undertaking may have reasonably believed to be entitled thereto, or shall have deposited the same in the bank for the benefit of the parties interested in the lands, or made such deposit by way of security in respect thereof as hereinbefore mentioned, although such person may not have been legally entitled thereto.

8 Vict. c. 18.

Decision of justices not conclusive as to the right of the promoters.

XC. On the trial of any action for any such penalty as aforesaid, the decision of the justices under the provision hereinbefore contained shall not be held conclusive as to right of entry on any such lands by the promoters of the undertaking.

Proceedings in case of refusal to deliver possession of lands.

XCI. If in any case in which, according to the provisions of this or the special Act, or any Act incorporated therewith, the promoters of the undertaking are authorised to enter upon and take possession of any lands required for the purposes of the undertaking, the owner or occupier of any such lands or any other person refuse to give up the possession thereof, or hinder the promoters of the undertaking from entering upon or taking possession of the same, it shall be lawful for the promoters of the undertaking to issue their warrant to the sheriff to deliver possession of the same to the person appointed in such warrant to receive the same, and upon the receipt of such warrant the sheriff shall deliver possession of any such lands accordingly, and the costs accruing by reason of the issuing and execution of such warrant, to be settled by the sheriff, shall be paid by the person refusing to give possession, and the amount of such costs shall be deducted and retained by the promoters of the undertaking from the compensation, if any, then payable by them to such party, or if no such compensation be payable to such party, or if the same be less than the amount of such costs, then such costs, or the excess thereof beyond such compensation, if not paid on demand, shall be levied by distress, and upon application to any justice for that purpose he shall issue his warrant accordingly.

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Copyholds.

And with respect to copyhold lands, be it enacted as follows :— (*a*)

Conveyance of copyhold lands to be enrolled.

XCV. Every conveyance to the promoters of the undertaking of any lands which shall be of copyhold or customary tenure, or of the nature thereof, shall be entered on the rolls of the manor of which the same shall be held or parcel; and on payment to the steward of such manor of such fees as would be due to him on the surrender of the same lands to the use of a purchaser thereof he shall make such enrolment;

(*a*) Sections 95 to 98 inclusive are incorporated with the Places of Worship Sites Act, 1873, see s. 1, *ante*, p. 640.

and every such conveyance, when so enrolled, shall have the like effect, in respect of such copyhold or customary lands, as if the same had been of freehold tenure; nevertheless until such lands shall have been enfranchised by virtue of the powers hereinafter contained, they shall continue subject to the same fines, rents, heriots, and services as were theretofore payable and of right accustomed. 8 Vict. c. 18.

Copyhold lands to be enfranchised.

XCVI. Within three months after the enrolment of the conveyance of any such copyhold or customary lands, or within one month after the promoters of the undertaking shall enter upon and make use of the same for the purposes of the works, whichever shall first happen, or if more than one parcel of such lands holden of the same manor shall have been taken by them, then within one month after the last of such parcels shall have been so taken or entered on by them, the promoters of the undertaking shall procure the whole of the lands holden of such manor so taken by them to be enfranchised, and for that purpose shall apply to the lord of the manor whereof such lands are holden to enfranchise the same, and shall pay to him such compensation in respect thereof as shall be agreed upon between them and him, and if the parties fail to agree respecting the amount of the compensation to be paid for such enfranchisement the same shall be determined as in other cases of disputed compensation; and in estimating such compensation the loss in respect of the fines, heriots, and other services payable on death, descent, or alienation, or any other matters which would be lost by the vesting of such copyhold or customary lands in the promoters of the undertaking, or by the enfranchisement of the same, shall be allowed for.

Compensation for enfranchisement.

Lord of the manor to enfranchise on payment of compensation.

XCVII. Upon payment or tender of the compensation so agreed upon or determined, or on deposit thereof in the bank in any of the cases hereinbefore in that behalf provided, the lord of the manor whereof such copyhold or customary lands shall be holden shall enfranchise such lands, and the lands so enfranchised shall for ever thereafter be held in free and common soccage, and in default of such enfranchisement by the lord of the manor, or if he fail to adduce a good title thereto to the satisfaction of the promoters of the undertaking, it shall be lawful for them, if they think fit, to execute a deed poll, duly stamped in the manner hereinbefore provided in the

8 Vict. c. 18.

case of the purchase of lands by them, and thereupon the lands in respect of the enfranchisement whereof such compensation shall have been deposited as aforesaid shall be deemed to be enfranchised and shall be for ever thereafter held in free and common soccage.

Apportionment of copyhold rents.

XCVIII. If any such copyhold or customary lands be subject to any customary or other rent, and part only of the land subject to any such rent be required to be taken for the purposes of the special Act, the apportionment of such rent may be settled by agreement between the owner of the lands and the lord of the manor on the one part, and the promoters of the undertaking on the other part, and if such apportionment be not so settled by agreement then the same shall be settled by two justices; and the enfranchisement of any copyhold or customary lands taken by virtue of this or the special Act, or the apportionment of such rents, shall not affect in other respects any custom by or under which any such copyhold or customary lands not taken for such purposes shall be held; and if any of the lands so required be released from any portion of the rents to which they were subject jointly with any other lands, such last-mentioned lands shall be charged with the remainder only of such rents; and with reference to any such apportioned rents the lord of the manor shall have all the same rights and remedies over the lands to which such apportioned rents shall have been assigned or attributed as he had previously over the whole of the lands subject to such rents or the whole of such rents.

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Lands in mortgage.

And with respect to lands subject to mortgage, be it enacted as follows:

Power to redeem mortgages.

CVIII. It shall be lawful for the promoters of the undertaking to purchase or redeem the interest of the mortgagee of any such lands which may be required for the purposes of the special Act, and that whether they shall have previously purchased the equity of redemption of such lands or not, and whether the mortgagee thereof be entitled thereto in his own right or in trust for any other party, and whether he be in possession of such lands by virtue of such mortgage or not, and whether such mortgage affect such lands solely, or jointly with any other lands not required for the purposes of the

special Act, and in order thereto the promoters of the undertaking may pay or tender to such mortgagee the principal and interest due on such mortgage, together with his costs and charges, if any, and also six months' additional interest, and thereupon such mortgagee shall immediately convey his interest in the lands comprised in such mortgage to the promoters of the undertaking, or as they shall direct, or the promoters of the undertaking may give notice in writing to such mortgagee that they will pay off the principal and interest due on such mortgage at the end of six months, computed from the day of giving such notice; and if they shall have given any such notice, or if the party entitled to the equity of redemption of any such lands shall have given six months' notice of his intention to redeem the same, then at the expiration of either of such notices, or at any intermediate period upon payment or tender by the promoters of the undertaking to the mortgagee of the principal money due on such mortgage, and the interest which would become due at the end of six months from the time of giving either of such notices, together with his costs and expenses, if any, such mortgagee shall convey or release his interest in the lands comprised in such mortgage to the promoters of the undertaking, or as they shall direct. 8 Vict. c. 18.

CIX. If, in either of the cases aforesaid, upon such payment or tender, any mortgagee shall fail to convey or release his interest in such mortgage as directed by the promoters of the undertaking, or if he fail to adduce a good title thereto to their satisfaction, then it shall be lawful for the promoters of the undertaking to deposit in the bank in the manner provided by this Act in like cases, the principal and interest, together with the costs, if any, due on such mortgage, and also if such payment be made before the expiration of six months notice as aforesaid, such further interest as would at that time become due; and it shall be lawful for them, if they think fit, to execute a deed poll, duly stamped, in the manner hereinbefore provided in the case of the purchase of lands by them; and thereupon as well as upon such conveyance by the mortgagee, if any such be made, all the estate and interest of such mortgagee, and of all persons in trust for him, or for whom he may be a trustee, in such lands, shall vest in the promoters of the undertaking, and they shall be entitled to immediate

Deposit of mortgage money on refusal to accept.

8 Vict. c. 18.

possession thereof in case such mortgagee were himself entitled to such possession.

Sum to be paid when mortgage exceeds the value of the lands.

CX. If any such mortgaged lands shall be of less value than the principal, interest, and costs secured thereon, the value of such land, or the compensation to be made by the promoters of the undertaking in respect thereof, shall be settled by agreement between the mortgagee of such lands and the party entitled to the equity of redemption thereof on the one part, and the promoters of the undertaking on the other part, and if the parties aforesaid fail to agree respecting the amount of such value or compensation, the same shall be determined as in other cases of disputed compensation; and the amount of such value or compensation, being so agreed upon or determined, shall be paid by the promoters of the undertaking to the mortgagee in satisfaction of his mortgage debt so far as the same will extend, and upon payment or tender thereof the mortgagee shall convey or release all his interest in such mortgaged lands to the promoters of the undertaking, or as they shall direct.

Deposit of money when refused on tender.

CXI. If upon such payment or tender as aforesaid being made, any such mortgagee fail so to convey his interest in such mortgage, or to adduce a good title thereto to the satisfaction of the promoters of the undertaking, it shall be lawful for them to deposit the amount of such value or compensation in the bank, in the manner provided by this Act in like cases, and every such payment or deposit shall be accepted by the mortgagee in satisfaction of his mortgage debt, so far as the same will extend, and shall be a full discharge of such mortgaged lands from all money due thereon; and it shall be lawful for the promoters of the undertaking, if they think fit, to execute a deed poll, duly stamped, in the manner hereinbefore provided in the case of the purchase of lands by them; and thereupon such lands, as to all such estate and interest as were then vested in the mortgagee or any person in trust for him, shall become absolutely vested in the promoters of the undertaking, and they shall be entitled to immediate possession thereof in case such mortgagee were himself entitled to such possession; nevertheless all rights and remedies possessed by the mortgagee against the mortgagor, by virtue of any bond or covenant or other obligation,

other than the right to such lands, shall remain in force in respect of so much of the mortgage debt as shall not have been satisfied by such payment or deposit. 8 Vict. c. 18.

Sum to be paid where part only of mortgaged lands taken.

CXII. If a part only of any such mortgaged lands be required for the purposes of the special Act, and if the part so required be of less value than the principal money, interest, and costs secured on such lands, and the mortgagee shall not consider the remaining part of such lands a sufficient security for the money charged thereon, or be not willing to release the part so required, then the value of such part, and also the compensation (if any) to be paid in respect of the severance thereof or otherwise, shall be settled by agreement between the mortgagee and the party entitled to the equity of redemption of such land on the one part, and the promoters of the undertaking on the other, and if the parties aforesaid fail to agree respecting the amount of such value or compensation the same shall be determined as in other cases of disputed compensation; and the amount of such value or compensation, being so agreed upon or determined, shall be paid by the promoters of the undertaking to such mortgagee in satisfaction of his mortgage debt so far as the same will extend; and thereupon such mortgagee shall convey or release to them, or as they shall direct, all his interest in such mortgaged lands the value whereof shall have been so paid: and a memorandum of what shall have been so paid shall be indorsed on the deed creating such mortgage, and shall be signed by the mortgagee; and a copy of such memorandum shall at the same time (if required) be furnished by the promoters of the undertaking, at their expense, to the party entitled to the equity of redemption of the lands comprised in such mortgage deed.

Deposit of money when refused on tender.

CXIII. If, upon payment or tender to any such mortgagee of the amount of the value or compensation so agreed upon or determined, such mortgagee shall fail to convey or release to the promoters of the undertaking, or as they shall direct, his interest in the lands in respect of which such compensation shall so have been paid or tendered, or if he shall fail to adduce a good title thereto to the satisfaction of the promoters of the undertaking, it shall be lawful for the promoters of the undertaking to pay the amount of such value or com-

8 Vict. c. 18.

pensation into the bank, in the manner provided by this Act in the case of monies required to be deposited in such bank, and such payment or deposit shall be accepted by such mortgagee in satisfaction of his mortgage debt, so far as the same will extend, and shall be a full discharge of the portion of the mortgaged lands so required from all money due thereon; and it shall be lawful for the promoters of the undertaking, if they think fit, to execute a deed poll, duly stamped in the manner hereinbefore provided in the case of the purchase of lands by them; and thereupon such lands shall become absolutely vested in the promoters of the undertaking, as to all such estate and interest as were then vested in the mortgagee, or any person in trust for him, and in case such mortgagee were himself entitled to such possession they shall be entitled to immediate possession thereof; nevertheless, every such mortgagee shall have the same powers and remedies for recovering or compelling payment of the mortgage money or the residue thereof (as the case may be), and the interest thereof respectively, upon and out of the residue of such mortgaged lands, or the portion thereof not required for the purposes of the special Act, as he would otherwise have had or been entitled to for recovering or compelling payment thereof upon or out of the whole of the lands originally comprised in such mortgage.

Compensation to be made in certain cases, if mortgage paid off before the stipulated time.

CXIV. Provided always, that in any of the cases hereinbefore provided with respect to lands subject to mortgage, if in the mortgage deed a time shall have been limited for payment of the principal money thereby secured, and under the provisions hereinbefore contained the mortgagee shall have been required to accept payment of his mortgage money, or of part thereof, at a time earlier than the time so limited, the promoters of the undertaking shall pay to such mortgagee, in addition to the sum which shall have been so paid off, all such costs and expenses as shall be incurred by such mortgagee in respect of or which shall be incidental to the reinvestment of the sum so paid off, such costs in case of difference to be taxed, and payment thereof enforced in the manner herein provided with respect to the costs of conveyances; and if the rate of interest secured by such mortgage be higher than at the time of the same being so paid off can reasonably be expected

to be obtained on reinvesting the same, regard being had to the then current rate of interest, such mortgagee shall be entitled to receive from the promoters of the undertaking, in addition to the principal and interest hereinbefore provided for, compensation in respect of the loss to be sustained by him by reason of his mortgage money being so prematurely paid off, the amount of such compensation to be ascertained in case of difference, as in other cases of disputed compensation; and until payment or tender of such compensation as aforesaid the promoters of the undertaking shall not be entitled, as against such mortgagee, to possession of the mortgaged lands under the provision hereinbefore contained. 8 Vict. c. 18.

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Leases.

And with respect to lands subject to leases, be it enacted as follows:

Where part only of lands under lease taken, the rent to be apportioned.

CXIX. If any lands shall be comprised in a lease for a term of years unexpired, part only of which lands shall be required for the purposes of the special Act, the rent payable in respect of the lands comprised in such lease shall be apportioned between the lands so required and the residue of such lands; and such apportionment may be settled by agreement between the lessor and lessee of such lands on the one part, and the promoters of the undertaking on the other part; and if such apportionment be not so settled by agreement between the parties, such apportionment shall be settled by two justices; and after such apportionment the lessee of such lands shall, as to all future accruing rent, be liable only to so much of the rent as shall be so apportioned in respect of the lands not required for the purposes of the special Act; and as to the lands not so required, and as against the lessee, the lessor shall have all the same rights and remedies for the recovery of such portion of rent as previously to such apportionment he had for the recovery of the whole rent reserved by such lease; and all the covenants, conditions, and agreements of such lease, except as to the amount of rent to be paid, shall remain in force with regard to that part of the land which shall not be required for the purposes of the special Act, in the same manner as they would have done in case such part only of the land had been included in the lease.

8 Vict. c. 18.

Tenants to be compensated.

CXX. Every such lessee as last aforesaid shall be entitled to receive from the promoters of the undertaking compensation for the damage done to him in his tenancy by reason of the severance of the lands required from those not required, or otherwise by reason of the execution of the works.

Compensation to be made to tenants at will, &c.

CXXI. If any such lands shall be in the possession of any person having no greater interest therein than as tenant for a year or from year to year, and if such person be required to give up possession of any lands so occupied by him before the expiration of his term or interest therein, he shall be entitled to compensation for the value of his unexpired term or interest in such lands, and for any just allowance which ought to be made to him by an in-coming tenant, and for any loss or injury he may sustain, or, if a part only of such lands be required, compensation for the damage done to him in his tenancy by severing the lands held by him or otherwise injuriously affecting the same; and the amount of such compensation shall be determined by two justices, in case the parties differ about the same; and upon payment or tender of the amount of such compensation all such persons shall respectively deliver up to the promoters of the undertaking, or to the person appointed by them to take possession thereof, any such lands in their possession required for the purposes of the special Act.

Where greater interest claimed than from year to year, lease to be produced.

CXXII. If any party, having a greater interest than as tenant at will, claim compensation in respect of any unexpired term or interest under any lease or grant of any such lands, the promoters of the undertaking may require such party to produce the lease or grant in respect of which such claim shall be made, or the best evidence thereof in his power; and if, after demand made in writing by the promoters of the undertaking, such lease or grant, or such best evidence thereof, be not produced within twenty-one days, the party so claiming compensation shall be considered as a tenant holding only from year to year, and be entitled to compensation accordingly.

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SCHEDULE (A).

Form of Conveyance.

I, , of , in consideration of the sum of paid to me (*or, as the case may be,* into the Bank of

England, *or* Bank of Ireland), in the name and with the privity of the Accountant-General of the Court of Chancery, *ex parte* "The Promoters of the undertaking" (*naming them*), *or* to A. B. of , and C. D. of (two trustees appointed to receive the same), pursuant to the (*here name the special Act*), by the (*here name the company or other promoters of the undertaking*) incorporated (*or* constituted) by the said Act, do hereby convey to the said company (*or other description*), their successors and assigns, all (*describing the premises to be conveyed*), together with all ways, rights, and appurtenances thereto belonging; and all such estate, right, title, and interest in and to the same as I am and shall become seised or possessed of, or am by the said Act empowered to convey, to hold the premises to the said company (*or other description*), their successors and assigns for ever, according to the true intent and meaning of the said Act. In witness whereof I have hereunto set my hand and seal, the day of , in the year of our Lord . 8 Vict. c. 18.

SCHEDULE (B).

Form of Conveyance on Chief Rent.

I, of , in consideration of the rent-charge to be paid to me, my heirs and assigns, as hereinafter mentioned, by "The Promoters of the undertaking" (*naming them*), incorporated (*or* constituted) by virtue of the (*here name the special Act*), do hereby convey to the said company (*or other description*), their successors and assigns, all (*describing the premises to be conveyed*), together with all ways, rights, and appurtenances thereunto belonging, and all my estate, right, title, and interest in and to the same and every part thereof, to hold the said premises to the said company (*or other description*), their successors and assigns for ever, according to the true intent and meaning of the said Act, they, the said company (*or other description*), their successors and assigns, yielding and paying unto me, my heirs and assigns, one clear yearly rent of by equal quarterly (*or* half-yearly, *as agreed upon*) portions, henceforth, on the (*stating the days*), clear of all taxes and deductions. In witness whereof I have hereunto set my hand and seal, the day of in the year of our Lord .

THE RAILWAY CLAUSES ACT, 1845.

8 Vict. c. 20.

8 VICT. C. 20.

An Act for consolidating in one Act certain Provisions usually inserted in Acts authorising the Making of Railways (*a*).

[8th May, 1845.]

* * * * * *

Recovery of Damages and Penalties.

And with respect to the recovery of damages not specially provided for, and of penalties, and to the determination of any other matter referred to justices, be it enacted as follows:

Provision for damages not otherwise provided for.

CXL. In all cases where any damages, costs, or expenses are by this or the special Act, or any Act incorporated therewith, directed to be paid, and the method of ascertaining the amount or enforcing the payment thereof is not provided for, such amount in case of dispute, shall be ascertained and determined by two justices; and if the amount so ascertained be not paid by the company or other party liable to pay the same within seven days after demand, the amount may be recovered by distress of the goods of the company or other party liable as aforesaid; and the justices by whom the same shall have been ordered to be paid, or either of them, or any other justice, on application, shall issue their or his warrant accordingly.

Distress against the treasurer.

CXLI. If sufficient goods of the company cannot be found whereon to levy any such damages, costs, and expenses payable by the company, the same may, if the amount thereof do not exceed twenty pounds, be recovered by distress of the goods of the treasurer of the company; and the justices aforesaid or either of them, on application, shall issue their or his warrant accordingly; but no such distress shall issue against the goods of such treasurer unless seven days previous notice in writing, stating the amount so due, and demanding payment thereof, have been given to such treasurer, or left at his residence; and if such treasurer pay any money under such

(*a*) The sections of this Act here set out are incorporated with the Cemeteries Clauses Act, 1847 (see 10 & 11 Vict. c. 65, s. 62, *ante*, p. 288).

distress as aforesaid he may retain the amount so paid by him, and all cost and expenses occasioned thereby, out of any money belonging to the company coming into his custody or control, or he may sue the company for the same. 8 Vict. c. 20.

Method of proceeding before justices in questions of damages, &c.

CXLII. Where in this or the special Act any question of compensation, expenses, charges, or damages, or other matter, is referred to the determination of any one justice or more, it shall be lawful for any justice, upon the application of either party, to summon the other party to appear before one justice, or before two justices, as the case may require, at a time and place to be named in such summons; and upon the appearance of such parties, or in the absence of any of them, upon proof of due service of the summons, it shall be lawful for such one justice, or such two justices, as the case may be, to hear and determine such question, and for that purpose to examine such parties or any of them, and their witnesses, on oath; and the cost of every such inquiry shall be in the discretion of such justices, and they shall determine the amount thereof.

Publication of penalties.

CXLIII. The company shall publish the short particulars of the several offences for which any penalty is imposed by this or the special Act, or by any bye-law of the company affecting other persons than the shareholders, officers, or servants of the company, and of the amount of every such penalty, and shall cause such particulars to be painted on a board, or printed upon paper and pasted thereon, and shall cause such board to be hung up or affixed on some conspicuous part of the principal place of business of the company, and where any such penalties are of local application shall cause such boards to be affixed in some conspicuous place in the immediate neighbourhood to which such penalties are applicable or have reference; and such particulars shall be renewed as often as the same or any part thereof is obliterated or destroyed; and no such penalty shall be recoverable unless it shall have been published and kept published in the manner hereinbefore required.

Penalty for defacing boards used for such publication.

CXLIV. If any person pull down or injure any board put up or affixed as required by this or the special Act for the purpose of publishing any bye-law or penalty, or shall obliterate any of the letters or figures thereon, he shall forfeit

8 Vict. c. 20.

for every such offence a sum not exceeding five pounds, and shall defray the expenses attending the restoration of such board.

Penalties to be summarily recovered before two justices.

CXLV. Every penalty or forfeiture imposed by this or the special Act, or by any bye-law made in pursuance thereof, the recovery of which is not otherwise provided for, may be recovered by summary proceeding before two justices; *and on complaint being made to any justice he shall issue a summons, requiring the party complained against to appear before two justices at a time and place to be named in such summons, and every such summons shall be served on the party offending either in person or by leaving the same with some inmate at his usual place of abode; and upon the appearance of the party complained against, or in his absence, after proof of the due service of the summons, it shall be lawful for any two justices to proceed to the hearing of the complaint, and that although no information in writing or in print shall have been exhibited before them; and upon proof of the offence, either by the confession of the party complained against, or upon the oath of one credible witness or more, it shall be lawful for such justices to convict the offender, and upon such conviction to adjudge the offender to pay the penalty or forfeiture incurred, as well as such costs attending the conviction as such justices shall think fit.*

The words in italics were repealed by the Summary Jurisdiction Act, 1884, and the Statute Law Revision Act, 1892.

CXLVI. Penalties to be levied by distress.

CXLVII. Imprisonment in default of distress.

Sections 146 and 147 were repealed by the Summary Jurisdiction Act, 1884, and the Statute Law Revision Act, 1892.

Distress how to be levied.

CXLVIII. Where in this or the special Act, or any Act incorporated therewith, any sum of money, whether in the nature of penalty or otherwise, is directed to be levied by distress, such sum of money shall be levied by distress and sale of the goods and chattels of the party liable to pay the same; and the overplus arising from the sale of such goods and chattels, after satisfying such sum of money, and the expenses of the distress and sale, shall be returned, on demand, to the party whose goods shall have been distrained.

8 Vict. c. 20.

Distress not unlawful for want of form.

CXLIX. No distress levied by virtue of this or the special Act, or any Act incorporated therewith, shall be deemed unlawful, nor shall any party making the same be deemed a trespasser, on account of any defect or want of form in the summons, conviction, warrant of distress, or other proceeding relating thereto, nor shall such party be deemed a trespasser *ab initio* on account of any irregularity afterwards committed by him, but all persons aggrieved by such defect or irregularity may recover full satisfaction for the special damage in an action upon the case.

Application of penalties.

CL. The justices by whom any such penalty or forfeiture shall be imposed may, where the application thereof is not otherwise provided for, award not more than one half thereof to the informer, and shall award the remainder to the overseers of the poor of the parish in which the offence shall have been committed, to be applied in aid of the poor's rate of such parish, *or if the place wherein the offence shall have been committed shall be extra-parochial, then such justices shall direct such remainder to be applied in aid of the poor's rate of such extra-parochial place, or, if there shall not be any poor's rate therein, in aid of the poor's rate of any adjoining parish or district.*

The words in italics were repealed by the Statute Law Revision Act, 1875.

CLI. Penalties to be sued for within six months.

This section was repealed by the Summary Jurisdiction Act, 1884, and the Statute Law Revision Act, 1892.

Damage to be made good in addition to penalty.

CLII. If, through any act, neglect, or default on account whereof any person shall have incurred any penalty imposed by this or the special Act, any damage to the property of the company shall have been committed by such person, he shall be liable to make good such damage as well as to pay such penalty; and the amount of such damages shall, in case of dispute, be determined by the justices by whom the party incurring such penalty shall have been convicted; and on non-payment of such damages, on demand, the same shall be levied by distress, and such justices, or one of them, shall issue their or his warrant accordingly.

CLIII. Penalty on witnesses making default.

This section was repealed by the Summary Jurisdiction Act, 1884.

8 Vict. c. 20.

Transient offenders.

CLIV. It shall be lawful for any officer or agent of the company, and all persons called by him to his assistance, to seize and detain any person who shall have committed any offence against the provisions of this or the special Act, and whose name and residence shall be unknown to such officer or agent, and convey him, with all convenient despatch, before some justice, without any warrant or other authority than this or the special Act; and such justice shall proceed with all convenient despatch to the hearing and determining of the complaint against such offender.

CLV. Form of conviction.

This section was repealed by the Statute Law Revision Act, 1892, and the Summary Jurisdiction Act, 1884.

Proceedings not to be quashed for want of form, &c.

CLVI. No proceeding in pursuance of this or the special Act, or any Act incorporated therewith, shall be quashed or vacated for want of form, nor shall the same be removed by certiorari or otherwise into any of the superior courts.

Parties allowed to appeal to Quarter Sessions on giving security.

CLVII. If any party shall feel aggrieved by any determination or adjudication of any justice with respect to any penalty or forfeiture under the provisions of this or the special Act, or any Act incorporated therewith, such party may appeal to the General Quarter Sessions *for the county or place in which the cause of appeal shall have arisen; but no such appeal shall be entertained unless it be made within four months next after the making of such determination or adjudication, nor unless ten days' notice in writing of such appeal, stating the nature and grounds thereof, be given to the party against whom the appeal shall be brought, nor unless the appellant forthwith after such notice enter into recognizances, with two sufficient sureties, before a justice, conditioned duly to prosecute such appeal, and to abide the order of the court thereon.*

The words in italics were repealed by the Summary Jurisdiction Act, 1884.

Court to make such order as they think reasonable.

CLVIII. At the Quarter Sessions for which such notice shall be given, the court shall proceed to hear and determine the appeal in a summary way, or they may, if they think fit, adjourn it to the following Sessions; and upon the hearing of such appeal the court may, if they think fit, mitigate any penalty or forfeiture, or they may confirm or quash the adjudication, and order any money paid by the

appellant or levied by distress upon his goods to be returned to him, and may also order such further satisfaction to be made to the party injured as they may judge reasonable; and they may make such order concerning the costs, both of the adjudication and of the appeal, as they may think reasonable. 8 Vict. c. 20.

Receiver of Metropolitan police district to receive penalties incurred within his district.

CLIX. Provided always, and be it enacted, that notwithstanding anything herein or in the special Act, or any Act incorporated therewith, contained, every penalty or forfeiture imposed by this or the special Act, or any Act incorporated therewith, or by any bye-law in pursuance thereof, in respect of any offence which shall take place within the Metropolitan Police District, shall be recovered, enforced, accounted for, and, except where the application thereof is otherwise specially provided for, shall be paid to the receiver of the Metropolitan Police District, and shall be applied in the same manner as penalties or forfeitures, other than fines upon drunken persons, or upon constables for misconduct, or for assaults upon police constables, are directed to be recovered, enforced, accounted for, paid, and applied by an Act passed in the third year of the reign of her present Majesty, intituled "An Act for regulating the Police Courts in the Metropolis"; and every order or conviction of any of the police magistrates in respect of any such forfeiture or penalty shall be subject to the like appeal, and upon the same terms, as is provided in respect of any order or conviction of any of the said police magistrates by the said last-mentioned Act; and every magistrate by whom any order or conviction shall have been made shall have the same power of binding over the witnesses who shall have been examined, and such witnesses shall be entitled to the same allowance of expenses as he or they would have had or been entitled to in case the order, conviction, and appeal had been made in pursuance of the provisions of the said last-mentioned Act. 2 & 3 Vict. c. 71.

Persons giving false evidence liable to penalties of perjury.

CLX. And be it enacted, that every person who, upon any examination upon oath, under the provisions of this or the special Act, or any Act incorporated therewith, shall wilfully and corruptly give false evidence, shall be liable to the penalties of wilful and corrupt perjury.

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COMMISSIONERS CLAUSES ACT, 1847.

10 Vict. c. 16.

10 VICT. C. 16 (*a*).

An Act for consolidating in one Act Certain Provisions usually contained in Acts with respect to the Constitution and Regulation of Bodies of Commissioners appointed for carrying on Undertakings of a Public Nature.

[23rd April, 1847.]

Extent of Act.

. . . . THIS Act shall extend only to such undertakings or commissioners as shall be authorised or constituted by any Act of Parliament hereafter to be passed, which shall declare that this Act shall be incorporated therewith; and all the clauses of this Act, save so far as they shall be expressly varied or excepted by any such Act, shall apply to the commissioners constituted by such Act and to the undertaking for carrying on which such commissioners shall be constituted, so far as the same shall be applicable thereto respectively; and such clauses, with the clauses of every other Act which shall be incorporated therewith, shall, save as aforesaid, form part of such Act, and be construed therewith as forming one Act.

Interpretations in this Act:

And with respect to the construction of this Act, and any Act incorporated therewith, be it enacted as follows:

"The special Act:"

II. The expression "the special Act" used in this Act shall be construed to mean any Act which shall be hereafter passed, constituting a body of commissioners as hereinafter defined for the purpose of carrying on any undertaking, and with which this Act shall be incorporated;

"Prescribed:"

and the word "prescribed" used in this Act, in reference to any matter herein stated, shall be construed to refer to such matter as the same shall be prescribed or provided for in the special Act; and the sentence in which such word occurs shall be construed as if, instead of the word "prescribed," the expression "prescribed for that purpose in the special Act" had been used;

"The undertaking:"

and the expression "the undertaking" shall mean the undertaking or

(*a*) See 20 & 21 Vict. c. 81, s. 19, p. 217, which incorporates these sections of the Commissioners Clauses Act, 1847, with the Burial Act, 1857.

works, of whatever nature, which shall by the special Act be authorised to be executed or carried on; and the expression "the commissioners" shall mean the commissioners, trustees, undertakers, or other persons or body corporate constituted by the special Act, or thereby entrusted with powers for executing the undertaking. 10 Vict. c. 16. "The commissioners:"

III. The following words and expressions, both in this and the special Act, and any Act incorporated therewith, shall have the several meanings hereby assigned to them, unless there be something in the subject or the context repugnant to such construction; (that is to say,) Interpretations in this and the special Act:

Words importing the singular number only shall include the plural number; and words importing the plural number only shall include the singular number: Number:

Words importing the masculine gender only shall include females: Gender:

The word "person" shall include a corporation, whether aggregate or sole: "Person:"

The word "lands" shall extend to messuages, lands, tenements, and hereditaments or heritages of any tenure: "Lands:"

The word "month" shall mean calendar month: "Month:"

The expression "superior courts," where the matter submitted to the cognisance of the court arises in England or Ireland, shall mean Her Majesty's superior courts of record at Westminster or Dublin, as the case may require: "Superior courts:"

The word "oath" shall include affirmation in the case of Quakers, and any declaration lawfully substituted for an oath in the case of any other persons allowed by law to make a declaration instead of taking an oath: "Oath:"

The word "county" shall include riding or other division of a county having a separate commission of the peace, and it shall also include county of a city or county of a town: "County:"

The word "justice" shall mean justice of the peace acting for the place where the matter requiring the cognisance of any such justice arises; and where any matter is authorised or required to be done by two justices, the expression "two justices" shall be understood to mean two or more justices met and acting together. "Justice:" "Two justices:"

10 Vict. c. 16.

"Quarter sessions:" The expression "quarter sessions" shall mean quarter sessions as defined in the special Act; and if such expression be not there defined, it shall mean the general or quarter sessions of the peace which shall be held at the place nearest to the undertaking for the county or place in which the undertaking, or the principal office thereof, is situate, or for some division of such county having a separate commission of the peace:

"Clerk:" The expression "the clerk" shall mean the clerk of the commissioners, and shall include the word "secretary":

"The town:" The expression "the town" shall mean the town or district named in the special Act within which the powers of the commissioners are to be exercised.

And with respect to citing this Act or any part thereof, be it enacted as follows:

Short title of this Act. IV. In citing this Act in other Acts of Parliament, and in legal instruments, it shall be sufficient to use the expression "The Commissioners Clauses Act, 1847."

Form in which portions of this Act may be incorporated with other Act. V. For the purpose of incorporating part only of this Act with any Act of Parliament hereafter to be passed, it shall be enough to describe the clauses of this Act with respect to any matter in the words introductory to the enactment with respect to such matter, and to enact that the clauses so described, or that this Act with the exception of the clauses so described, shall be incorporated with such Act; and thereupon all the clauses of this Act so incorporated shall, save so far as they are expressly varied or excepted by such Act, form part of such Act, and such Act shall be construed as if such clauses were set forth therein with reference to the matter to which such Act relates.

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Mortgages. And with respect to the mortgages to be executed by the commissioners, be it enacted as follows (*a*):

Form of mortgage. LXXV. Every mortgage or assignation in security of rates or other property authorised to be made under the provisions of this or the special Act shall be by deed duly stamped, in which the consideration shall be truly stated; and every such deed shall be under the common seal of the commissioners if they be a body corporate, and may be according to the form in

(*a*) Words which refer to Scotland, and are inapplicable, are omitted.

the schedule (B) to this Act annexed (*a*), or to the like effect; and the respective mortgagees or assignees in security shall be entitled one with another to their respective proportions of the rates and assessments or other property comprised in such mortgages or assignations respectively, according to the respective sums in such mortgages or assignations mentioned to be advanced by such mortgagees or assignees respectively, and to be repaid the sums so advanced, with interest, without any preference one above another by reason of the priority of advancing such monies, or of the dates of any such mortgages or assignations respectively. 10 Vict. c. 16.

Register of mortgages to be kept and to be open to inspection.

LXXVI. A register of mortgages or assignations in security shall be kept by the clerk to the commissioners, and where by the special Act the commissioners are authorised or required to raise separate sums on separate rates or other property, a separate register shall be kept for each class of mortgages or assignations in security, and within fourteen days after the date of any mortgage or assignation in security an entry or memorial of the number and date thereof, and of the names of the parties thereto, with their proper additions, shall be made in the proper register, and every such register may be perused at all reasonable times by any person interested in any such mortgage or assignation in security without fee or reward.

Transfer of mortgages.

LXXVII. Any person entitled to any such mortgage or assignation may transfer his right and interest therein to any other person; and every such transfer shall be by deed duly stamped, wherein the consideration shall be duly stated: and

(*a*) The Form of Mortgage given in the schedule is as follows:

By virtue of [here name the special Act], we [here name the corporation, if the commissioners be incorporated] appointed in pursuance of the said Act, in consideration of the sum of paid to the treasurer to the said commissioners by A. B. of for the purposes of the said Act, do grant and assign unto the said A. B., his executors, administrators, or assigns, such proportion of the rates, rents, profits, and other monies arising or accruing by virtue of the said Act from [here describe the rates or other property proposed to be mortgaged] as the said sum of doth or shall bear to the whole sum which is or shall be borrowed upon the credit of the said rates, rents, profits, or monies, to hold to the said A. B., his executors, administrators, and assigns, from this day until the said sum of with interest at per centum per annum for the same, shall be fully paid and satisfied: the principal sum to be repaid at the end of years from the date hereof [in case any period be agreed upon for that purpose]. Given under our corporate seal [or, in witness whereof we have hereunto set our hands and seals], this day of , one thousand eight hundred and .

10 Vict. c. 16.

every such transfer may be according to the form in the schedule (C) to this Act annexed (*a*), or to the like effect.

Register of transfers to be kept.

LXXVIII. Within thirty days after the date of every such transfer, if executed within the United Kingdom, or otherwise within thirty days after the arrival thereof in the United Kingdom, it shall be produced to the clerk to the commissioners, and thereupon such clerk shall cause an entry or memorial thereof to be made, in the same manner as in the case of the original mortgage or assignation in security, and for such entry the clerk may demand a sum not exceeding five shillings; and after such entry every such transfer shall entitle the transferee, his executors, administrators, or assigns, to the full benefit of the original mortgage or assignation in security, and the principal and interest thereby secured; and such transferee may in like manner assign or transfer the same again, *toties quoties*; and it shall not be in the power of any person, except the person to whom the same shall have been last transferred, his executors, administrators, or assigns, to make void, release, or discharge the mortgage or assignation so transferred, or any money thereby secured.

Interest on mortgages to be paid half-yearly.

LXXIX. Unless otherwise provided by any mortgage or assignation in security, the interest of the money borrowed thereupon shall be paid half-yearly to the several parties entitled thereto.

Power to borrow money at a lower rate of interest, to pay off securities at a higher rate.

LXXX. If the commissioners can at any time borrow or take up any sum of money at a lower rate of interest than any securities given by them and then be (*sic*) in force shall bear, they may borrow such sum at such lower rate as aforesaid, in order to pay off and discharge the securities bearing such higher rate of interest, and may charge the rates and other property which they may be authorised to mortgage or assign in security under this or the special Act, or any part thereof, with payment of

(*a*) The Form of Transfer of Mortgage is as follows:

I, A. B., of in consideration of the sum of paid to me by C. D. of do hereby transfer to the said C. D., his executors, administrators, and assigns, a certain mortgage, number made by "the commissioners for executing the [here name the special Act]" to bearing date the day of for securing the sum of and interest [or, if such transfer be by indorsement, the within security], and all my right, estate, and interest in and to the money thereby secured, and in and to the rates, rents, profits, or other monies thereby assigned. In witness whereof I have hereunto set my hand and seal this day of , one thousand eight hundred and

such sum and such lower rate of interest, in such manner and subject to such regulations as are herein contained with respect to other monies borrowed on mortgage or assignation in security.

Repayment of money borrowed at a time and place agreed upon.

LXXXI. The commissioners may, if they think proper, fix a period for the repayment of all principal monies borrowed under the provisions of this or the special Act, with the interest thereof, and in such case the commissioners shall cause such period to be inserted in the mortgage deed or assignation in security; and upon the expiration of such period the principal sum, together with the arrears of interest thereon, shall, on demand, be paid to the party entitled to receive such principal money and interest, and if no other place of payment be inserted in such deed such principal and interest shall be payable at the office of the commissioners.

Repayment of money borrowed when no time or place has been agreed upon.

LXXXII. If no time be fixed in the mortgage deed or assignation in security for the repayment of the money so borrowed, the party entitled to receive such money may, at the expiration or at any time after the expiration of twelve months from the date of such deed, demand payment of the principal money thereby secured, with all arrears of interest, upon giving six months previous notice for that purpose, and in the like case the commissioners may at any time pay off the money borrowed, on giving the like notice; and every such notice shall be in writing or print, or both, and if given by a mortgagee or creditor shall be delivered to the clerk or left at the office of the commissioners, and if given by the commissioners shall be given either personally to such mortgagee or creditor, or left at his residence, or if such mortgagee or creditor be unknown to the commissioners, or cannot be found after diligent inquiry, such notice shall be given by advertisement in the *London Gazette*.

Interest to cease on expiration of notice to pay off a mortgage debt.

LXXXIII. If the commissioners shall have given notice of their intention to pay off any such mortgage or assignation in security at a time when the same may lawfully be paid off by them, then at the expiration of such notice all further interest shall cease to be payable thereon, unless, on demand of payment made pursuant to such notice, or at any time thereafter, the commissioners fail to pay the principal and interest due at the expiration of such notice on such mortgage or assignation in security.

10 Vict. c. 16.

Monies borrowed on security of rates to be paid off in a limited period.

LXXXIV. In order to discharge the principal money borrowed as aforesaid on security of any of the rates, the commissioners shall every year appropriate and set apart out of such rates respectively a sum equal to the prescribed part, as a sinking fund to be applied in paying off the respective principal monies so borrowed, and shall from time to time cause such sinking fund to be invested in the purchase of exchequer bills or other government securities, and to be increased by accumulation in the way of compound interest or otherwise, until the same respectively shall be of sufficient amount to pay off the principal debts respectively to which such sinking fund shall be applicable, or some part thereof, which the commissioners shall think ought then to be paid off, at which time the same shall be so applied in paying off the same in manner hereinafter mentioned.

Mode of paying off mortgages.

LXXXV. Whenever the commissioners shall be enabled to pay off one or more of the mortgages or assignations in security which shall be then payable, and shall not be able to pay off the whole of the same class, they shall decide the order in which they shall be paid off by lot among the class to which such one or more of the mortgages or assignations in security belong, and shall cause a notice, signed by their clerk, to be given to the persons entitled to the money to be paid off, pursuant to such lot, and such notice shall express the principal sum proposed to be paid off, and that the same will be paid, together with the interest due thereon, at a place to be specified, at the expiration of six months from the date of giving such notice.

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Account books to be open for the inspection of mortgagees.

LXXXVIII. The books of account of the commissioners shall be open at all seasonable times to the inspection of the respective mortgagees or assignees in security of the commissioners, with liberty to take extracts therefrom without fee or reward.

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THE WATERWORKS CLAUSES ACT, 1847.

10 VICT. C. 17 (*a*).

10 Vict. c. 17.

An Act for consolidating in one Act certain Provisions usually contained in Acts authorising the making of Waterworks for supplying Towns with Water. [23rd April, 1847.]

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And with respect to the breaking up of streets for the purpose of laying pipes; be it enacted as follows:

Power to break up streets, &c. under superintendence, and to open drains.

XXVIII. The undertakers under such superintendence as it is hereinafter specified, may open and break up the soil and pavement of the several streets and bridges within the limits of the special Act, and may open and break up any sewers, drains, or tunnels, within or under such streets and bridges, and lay down and place within the same limits, pipes, conduits, service-pipes, and other works and engines, and from time to time repair, alter or remove the same, and for the purposes aforesaid, remove and use all earth and materials in and under such streets and bridges, and do all other acts which the undertakers shall from time to time deem necessary for supplying water to the inhabitants of the district included within the said limits; doing as little damage as can be in the execution of the powers hereby or by the special Act granted and making compensation for any damage which may be done in execution of such powers.

Not to enter on private land without consent.

XXIX. Provided always that nothing herein contained shall authorise or empower the undertakers to lay down or place any pipe, conduit, service-pipe, or other work in any land not dedicated to public use without the consent of the owners and occupiers thereof, except that the undertakers at any time may enter upon and lay or place any new pipe in the place of an existing pipe in any land wherein any pipe hath been already lawfully laid down or placed in pursuance of this or the special

(*a*) The sections of the Waterworks Clauses Act, 1847, here set out, are incorporated with the Cemeteries Clauses Act, 1847, by s. 19 of that Act, *ante*, p. 273.

10 Vict. c. 17.

Act, or any other Act of Parliament, and may repair or alter any pipe so laid down.

Notice to be served on persons having control, &c. before breaking up streets or opening drains.

XXX. Before the undertakers open or break up any street, bridge, sewer, drain, or tunnel, they shall give to the persons under whose control or management the same may be, or to their clerk, surveyor, or other officer, notice in writing of their intention to open or break up the same, not less than three clear days before beginning such work, except in cases of emergency arising from defects in any of the pipes or other works, and then so soon as is possible after the beginning of the work or the necessity for the same shall have arisen.

Streets or drains not to be broken up except under superintendence of persons having control of the same.

XXXI. No such street, bridge, sewer, drain, or tunnel, shall, except in the cases of emergency aforesaid, be opened or broken up, except under the superintendence of the persons having control or management thereof or of their officer, and according to such plan as shall be approved of by such persons or their officer or in case of any difference respecting such plan as shall be determined by two justices; and such justices may, on the application of the persons having the control or management of any such sewer or drain, or their officer, require the undertakers to make such temporary or other works as they think necessary for guarding against any interruption of the drainage during the execution of any works which interfere with any such sewer or drain: provided always, that if the persons having such control or management as aforesaid, and their officer fail to attend at the time fixed for the opening of any such street, bridge, sewer, drain, or tunnel, and after having had such notice of the intention of the undertakers as aforesaid, or shall not propose any plan for breaking up or opening the same, or shall refuse or neglect to superintend the operation, the undertakers may perform the work specified in such notice without the superintendence of such persons or their officer.

If persons having the control, &c. fail to superintend, undertakers may perform the work without them.

Streets, &c. broken up to be reinstated without delay.

XXXII. When the undertakers open or break up the road or pavement of any street or bridge, or any sewer, drain, or tunnel, they shall with all the convenient speed complete the work for which the same shall be broken up, and carry away the rubbish occasioned thereby, and shall at all times whilst any such road or pavement shall be so opened or broken up cause the same to be fenced and guarded, and shall cause

a light sufficient for the warning of passengers to be set up and kept there against, every night during which such road or pavement shall be continued open or broken up, and shall, after replacing and making good the road or pavement which shall have been so broken up, keep the same in good repair for three months thereafter, and such further time, if any, not being more than twelve months in the whole, as the soil so broken up shall continue to subside. 10 Vict. c. 17.

Penalty for delay in reinstating streets.

XXXIII. If the undertakers open or break up any street or bridge, or any sewer, drain, or tunnel, without giving such notice as aforesaid, or in a manner different to that which shall have been approved of or determined as aforesaid, or without making such temporary or other works as aforesaid, when so required, except in the cases in which the undertakers are authorised to perform such works without any superintendence or notice, or if the undertakers make any unnecessary delay in completing any such work, or in filling in the ground, or reinstating and making good the road or pavement, or the sewer, drain, or tunnel so opened or broken up, or in carrying away the rubbish occasioned thereby, or if they neglect to cause the place where such road or pavement has been broken up to be fenced, guarded, and lighted, or neglect to keep the road or pavement in repair for the space of six months next after the same has been made good, or such further time as aforesaid, they shall forfeit to the persons having the control or management of the street, bridge, sewer, drain, or tunnel in respect of which such default is made a sum not exceeding five pounds for every such offence, and an additional sum of five pounds for each day during which any such delay as aforesaid shall continue after they shall have received notice thereof.

In case of delay other parties may reinstate, and recover the expenses.

XXXIV. If any such delay or omission as aforesaid shall take place, the persons having the control or management of the street, bridge, sewer, drain, or tunnel in respect of which such delay or omission shall take place may cause the work so delayed or omitted to be executed, and the expense of executing the same shall be repaid to such person by the undertakers, and such expenses may be recovered in the same way as damages are recoverable under this and the special Act.

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HOME OFFICE RULES AND DIRECTIONS.

Suggestions for Burial Boards providing and managing Burial Grounds, and making arrangements for Interments by the Inspector under the Burial Acts of 1852-3-4-5-7-9, 1860, 1871, &c. Approved by the Secretary of State (*a*).

SITUATION.

Situation.

THE site for a burial ground should be chosen far enough from dwellings, to secure their inmates from danger or annoyance, and near enough to the mass of the population, to avoid as much as possible increasing the cost and inconvenience of conveying funerals a too great distance.

Small burial grounds may with propriety be established nearer to a town than larger ones, and nearer to towns which are slowly than to such as are rapidly increasing. It is desirable to choose a site towards which the town is not extending, both because such a situation is not likely to be encroached upon by houses, and because land not in demand for building is cheaper, and more of it may therefore be obtained at moderate cost. Land at building-ground price is generally too dear for graves. It is often, however, more economical to pay a rather higher price for land, than to fix the burial ground at such a distance as to render carriages necessary for all the funerals, the annual cost of which may exceed the saving of interest on the extra price of the land: the object being to keep down the charge of the entire funeral, not merely to secure cheap graves, the cost of which is often a small part only of the whole expense. Many burial grounds are much used as public walks, for which purpose they would be useless at too great a distance from the population.

The Burial Act of 1855 requires that no ground (not already used as or appropriated for a cemetery) shall be used

(*a*) November, 1872.

for burials, *under this Act*, unless the consent in writing of the owner, lessee, and occupier of every dwelling within 100 yards of any ground to be so used shall be previously obtained. The object of this provision is doubtless to enable owners of houses to protect their property from depreciation, as well as to guard the occupiers from annoyance or risk of injury. It is evidently important to avoid selecting a site for which many such consents must be obtained, but it is not necessary (as some have supposed) that no house whatever shall be within that distance, nor is the consent of the owners or occupiers of houses within that distance indispensably necessary in all cases. When a new burial ground is provided or an old one enlarged otherwise than under the Burial Act, the consent of the owners, lessees, and occupiers of dwelling-houses within 100 yards should, if possible, be obtained, and, if refused, evidence should be offered to show that no danger of injury or annoyance is to be reasonably apprehended. Burial grounds not provided under the Act are very generally intended for a much smaller number of burials than those usually so provided, and may therefore be properly and safely allowed at a less distance from habitations.

SOIL AND DRAINAGE.

Soil and drainage.

The quality of the soil is of great importance. Dry, open soils which readily admit air and moisture, allowing the rain which falls upon the surface to enter readily, carrying air down with it, facilitate decay, and permit graves to be sooner reopened for subsequent interments. Porous soils, mixed with vegetable mould, absorb and decompose the products of decay, and prevent the escape of injurious emanations, if the quantity of animal matter be not too large in proportion to the area, and if the soil near the coffin be left undisturbed until decomposition is completed. Dense clay soils are in all respects undesirable; they exclude air and moisture, retard decomposition, and render it improper to reopen a grave, to nearly its original depth, within any reasonable period. In some such soils coffins have remained undecayed for thirty years or more, and therefore graves in such soils can be used a very limited number of times only. They are moreover expensive to drain; they retain the gases of decomposition, and sometimes crack,

possibly allowing dangerous exhalations to escape. It is so difficult and expensive to remedy these defects, that it is better to select an open than a clay soil, even though the site be moderately more distant, or more costly. In some such cases the plan has been adopted of enclosing separately every coffin buried in concrete or cemented stone or brick-work, the extra cost of which is to be set against the diminished cost of less excavation, and less rapid filling of space.

Soils which have no proper mould, and which consist chiefly of stone, may allow of the passage of undecomposed emanations, and it is difficult and expensive to supply the mould in which they are deficient. It is always desirable, before deciding upon a site, to have the soil examined in various places to the depth of at least eight feet.

The neighbourhood of any open reservoir or conduit conveying water used for domestic purposes should be avoided, and great care must be taken that there are no wells, or streams supplying water so used, liable to be polluted by drainage from graves.

Land which cannot be effectually drained, so as to prevent water remaining in any vault or grave, or which is liable to be flooded, is unsuitable. Several fatal accidents have been caused by the foul water from a grave or vault bursting in upon another grave made near it. Great reluctance is felt to burying a coffin in a wet grave, and it is very disagreeable and sometimes dangerous to bale water on to the surface.

As is well known, dense soils are rendered less so when effectually drained, and such are thereby rendered less unsuitable for burial purposes. Sometimes when deep drainage is required, it will be sufficient to construct one or more deep drains through the cemetery without any artificial connection with the graves; but when the soil is very dense, the only effectual mode of preventing accumulation of foul water in the grave is by laying a pipe or broken stone drain from grave to grave, and so connecting them all with the main drain. In some such cases this cost has been diminished by making the first graves next to the drain, and merely opening the soil between the bottom of the grave and the drain, taking care to put at the bottom of every grave some gravel or other porous material. This plan has been found effectual for maintaining a passage for the water without great cost.

The surface water has been successfully managed in three different ways in soil too dense to allow of percolation. In some such cases great care has been taken by ramming in the soil to prevent surface water entering the grave, but this is difficult and costly; in other cases a line of drain pipes has been laid just below the surface soil at the upper end of each row of graves to catch the surface water which would otherwise trickle into them; the third plan has been to place drain pipes vertically in the corner of each grave to convey any water which may enter it direct to the drain at the bottom of each. The necessity for adopting any of these expedients shows the importance of avoiding, if possible, a soil so dense as to require them.

In a few instances, when it was impossible to obtain a sufficient outfall for the drainage, the water has been removed by pumping; in other cases, escape for the water has been obtained by sinking a shaft through the impervious stratum which retained it, into a pervious stratum below. Very careful preliminary examination will be necessary, and no difficult modes of drainage should be resorted to, unless advised by a person of skill and experience; or very heavy expense may be incurred. In all cases care must be taken not to risk the pollution of water used for domestic purposes.

In some cemeteries clay soil has been improved by mixing sand or gravel with that with which graves are refilled, to render it porous. It has been proposed to use burnt clay for this purpose.

PATHS AND ROADWAYS.

Paths and roadways.

As burial grounds ought to be conveniently accessible at all seasons of the year, it is very important that the roads be of very hard material; and there should be ample provision of footpaths fit to walk upon in the wettest weather.

At Nottingham, Chesterfield, Sheffield, and some other of the midland and northern towns, roads and footpaths for gardens and cemeteries have been formed somewhat resembling asphalte, but very much cheaper. They are made by iron furnace cinder, or other hard material, bound together by gas tar, boiled down to a sort of pitch, only just enough to bind the material together being used, and sprinkled with sparkling spar to render them ornamental. This material is

stated to be very suitable for a footpath which must be used in all weathers; being always hard and free alike from dirt or dust, cheap, durable, easily repaired, and requiring no weeding. No one possesses any patent right to make this asphalte, but those accustomed to make it are likely to do so best. It is rather extensively used at railway stations, and may be kept in good repair at small cost.

Some burial grounds have a footpath between every second row of graves, so that access to any may be obtained without walking on the grass. There is rarely occasion for incurring this expense, as the grass path, which may be easily left by so arranging that the ends of the graves shall be alternately rather less and rather more apart, will be usually all that is needed for giving access from the main path to all the graves, without trampling upon any. When the ground is wet and soft a temporary pathway of planks may be laid upon the grass paths.

FENCING AND PLANTING.

Fencing and planting.

The official regulations require simply that the burial ground shall be effectually fenced, so that it may be protected from trespassers or from the intrusion of any animals which may injure the monuments, plants, or trees, leaving the sort of fence undetermined. When the burial ground is among fields, a good hedge, which may be strengthened by stretched wires, is all that is often thought necessary, with a dwarf wall and rail, if there be any public road adjoining. A favourite plan is a sunk fence with a wall on one side only, and evergreen or other hedge on the top. High walls are generally objected to as unsightly, unnecessarily expensive, and impeding the free passage of air. Sometimes, however, walls are useful to increase the seclusion of the cemetery, or to shelter it from cutting winds, which might prevent the growth of trees and shrubs.

In almost all cases burial boards have been desirous of obtaining more ground than is absolutely required, in order that part may be devoted to ornamental planting, and sites are often chosen on which ornamental trees already stand. Growing vegetation is not only useful for ornament, but for absorbing and rendering harmless the products of putrefaction.

Trees, by their roots, carry off the products of decay, and enable a cemetery to serve some of the purposes of a public walk or garden, by making it a place of safe, quiet, and agreeable resort; and when cemeteries are, as is usual, ornamentally laid out and well kept, they are a source of great gratification and advantage; they are especially resorted to on Sunday afternoons, and are much valued by those who have little other opportunity of taking out-door exercise except during part of their day of rest. Very little complaint has been made of improper behaviour by those who resort to the cemeteries, except when the practice of burial on Sundays has been continued, when the presence of numerous spectators has often been found very inconvenient. Many burial boards have, to avoid this and other serious evils, limited burials on Sundays to those before morning service, greatly to the advantage of the servants of the burial boards, of the undertakers and their men, and, as is believed, of those who before buried their dead on Sundays, who, it is asserted, spent more in funeral expenses on Sundays than they saved by not giving up their earnings on a week day. The serious inconvenience that must be caused by imposing extra duty on ministers of religion on the days when they are otherwise most engaged is evident.

As cemeteries are frequented at all seasons, it is well to have a large proportion of evergreen trees, some of which, such as the cypress and yew, are peculiarly appropriate; but there should be mixed with them deciduous trees and some of quick growth, to relieve the bareness of newly-enclosed ground, to be removed when no longer needed.

"Mr. Loudon recommends for planting in cemeteries trees chiefly of the fastigiate growing kinds, which neither cover a large space with their branches nor give too much shade when the sun shines, and which admit light and air to neutralise any mephitic effluvia. Of these there are the oriental arbor vitæ, the evergreen cypress, the Swedish and Irish juniper, &c. For the same reason, trees of the narrow conical forms, such as the red cedar, and various pines and firs, are desirable. In advantageously situated cemeteries, some of the larger trees, such as the cedar of Lebanon, the oriental plane, the purple beech, the dark yew, and the flowering ash, syca-

mores, mountain ash, hollies, thorns, and some species of oaks, such as the evergreen oak, the Italian oak, with flowering trees and shrubs, would find places in due proportion." (*a*)

It is of importance that trees and shrubs should not cover too large a portion of the burial ground, and that they should not be too closely planted, or should be thinned out as they grow large, to avoid interfering with the ventilation and with the free passage of air. A suitable disposal of trees or shrubs along roads or pathways would afford shelter to persons visiting graves, and to funeral processions. It is customary in well-regulated cemeteries to avoid burying close to the boundary fence. On many accounts this is advisable, as there is no law to prevent houses being built and wells sunk close to a burial ground; there is, moreover, a disposition to erect houses in the vicinity of ornamental cemeteries. Much of the evil may be prevented by draining the ground in such a manner as to prevent the water passing into the subsoil of the neighbourhood, and by the adoption of proper regulations as to burial; but it would nevertheless be advisable to leave a belt of land for planting between the fence and the nearest graves. This strip of ground would not be wasted, for part of it might be used as a walk, and part for ornamental shrubs. A surrounding belt of shrubbery would contribute to the seclusion of the ground, and need not be so close as to check too much the free passage of air.

SIZE OF GRAVE SPACES.

Size of grave spaces.

The official regulations require that grave spaces for persons above twelve years of age be nine feet long by four feet wide, or four square yards; and for children under that age, six feet long by three wide, or equal to two square yards; the average size (where two sizes are used) will therefore be rather more or rather less than three square yards, according as there is a larger or smaller proportion of children's burials, that is, generally, according to the sanitary condition of the district.

It will be noticed that these dimensions are conveniently commensurate with each other; that the length of two large

(*a*) Supplementary Report on the Practice of Interment in Towns.

grave spaces is equal to that of three small ones, and in breadth three large ones equal four small ones; thus the space occupied by six large grave spaces, namely, 18 feet long by 12 feet wide, may be divided into twelve small grave spaces in three rows of four each, or the reverse. This coincidence simplifies the laying out of the ground, and renders it easy without waste to intermix large and small grave spaces, so as to allow those for children and their parents to be near each other, instead of in distant parts of the cemeteries, which would otherwise be necessary.

These are the sizes of the grave spaces sanctioned by Parliament at the Woking Common Cemetery, and are less than have been adopted by many cemeteries abroad. In some Austrian cemeteries the grave space for adults is equal to 90 square feet; at Wirtemberg it is above 54 square feet; at Munich and Stuttgart it is 32 square feet, which is about the size some English cemeteries have adopted, though in many they are much less. The object of a large grave space is to secure such a quantity of soil as will effectually absorb the gases of decomposition, and such a separation between the graves as will prevent risk of the soil falling when the next grave is dug, while the space left at the head of the grave affords room where a monument may stand undisturbed, and, by so arranging that the rows of graves may be alternately nearer and more distant, space for a grass path between every alternate row of grave spaces may be left, and access given to every grave without trampling over any.

DEPTH OF GRAVES.

Depth of graves.

If bodies are buried at too small a depth beneath the soil, the emanations may not be effectually absorbed; if at too great a depth, needless expense is incurred; and if no objection were felt to the future disturbance of mere dry bones, a depth of four to six feet beneath the surface would be sufficient.

There is, however, so strong and natural a repugnance to having the bones of the dead dug up, that the plan is frequently adopted of burying at a depth of 8 to 10 feet (if the ground be free from water), with the intention of re-opening

the grave after a lapse of time, not quite to its original depth, but as nearly so as is possible without digging up any bones that may remain; thus the same grave may be buried in many times before it becomes so full of bones as to be unfit for further use.

Burial boards have generally made such ample provision of ground that graves may remain unopened for much longer periods than are fixed by the official regulations, and it is therefore probable that the retardation of decomposition in consequence of the depth of graves will occasion no inconvenience.

The principle of interment generally adopted is that of allowing one body only to be in a grave at the same time, as the rule; more than one, as the exception. The exception is in the case of family graves, which may be re-opened when a death in the same family occurs. This exception is, however, generally speaking, more apparent than real, for deaths in the same family do not, on the average, occur within intervals too short to allow of decomposition, and where they do the regulation requires that a layer of earth, a foot thick at least, shall be left undisturbed above each coffin. It would be well, however, if even such exceptions could be avoided, as they often are, by adopting the plan of burying members of the same family in adjoining graves instead of in the same grave, a less costly plan than that of building walled graves if earthen graves be sold in plots at not much more than their cost to the burial board.

These regulations (except the last precaution) being similar to the immemorial custom of country churchyards in England, in respect to single interment, the regulation would merely make that the universal, which was before the general rule.

By adopting this plan, the same grave may be used many times without digging up remains, without danger of having more animal matter at one spot than the soil and vegetation can absorb, and without making that painful distinction between classes, which the practice of burying one body only in each private grave, but several, not related to each other, in the public graves, involves.

The economy of burying several bodies in a grave at a time is more apparent than real, for unless the grave be dug very deep, which is costly, or unless the coffins be packed close

together, which is dangerous, a grave cannot hold so many coffins at once as might be safely buried in it at intervals, allowing for the decay of each corpse before another is buried, until the soil becomes too full of bones to be used any longer with propriety. Some burial boards, however, consider it more economical to incur the cost of digging very deep graves to hold several bodies each, rather than to have as many separate graves opened as there are burials; the objections to this plan are, however, very serious.

In many country churchyards it has long been the custom to allot to families a space of ground enough for several graves, so that relatives are buried side by side, not over each other, the graves being opened in succession, so that a very long interval must elapse before any such grave is re-opened. Burial boards may adopt a similar plan with advantage; if family grave plots, enough to bury from three to six members of a family side by side, were sold at less than the cost of walled graves, it is probable many such would be taken (*a*). The advantage would be, the family could, at a less cost than that of a walled grave, obtain, as secure and as distinctive, a permanent place of sepulchre which would serve for generations, and the burial board would receive what is now paid to bricklayers. This plan is likely to be more acceptable than the use of vaults, if the land is charged for at a price proportionate to its cost. About 200 plots, large enough to permit of the burial of four adults and three children without re-opening a grave, may be laid out in an acre of actual burial surface. For every pound, therefore, charged, in addition to fees, for such plots, the available surface would be disposed of at the rate of 200*l.* an acre, and if offered at a price not much above what is sufficient to cover the cost, so many family plots would probably be sold, that a large part of the first cost of the cemetery would be defrayed without practically being a burden to any one.

A burial board could, without loss to the ratepayers, sell such graves in anticipation of the time when they would otherwise be purchased, at a very large reduction of price, because the purchaser by paying for them so long beforehand would in effect be paying compound interest on the sums charged during the interval. Every pound received fourteen years before it

(*a*) See plan, p. 868.

would otherwise be received is worth about two pounds if the payment be deferred; and if a family purchase three graves instead of one at once, and pay the cost of two graves for them, the ratepayers will be relieved by the transaction, for in the ordinary way the graves purchased in anticipation would produce no income, as they do if they be paid for and the money either invested or the debt on the burial ground reduced. In some cemeteries family grave plots are sold, consisting of three grave spaces surrounded with a space for shrubs and flowers. In others the portion allotted for unpurchased graves is laid out in rows of grave spaces with flower beds nine feet wide between. When the graves are filled the flower beds can be moved on to the graves, and new graves dug in the space at first occupied with flowers; thus room for ornamentation is obtained without cost for ground.

RE-OPENING OF GRAVES.

Re-opening of graves.

The time necessary for the complete decay of bodies buried varies according to the nature of the soil, the depth of the grave, the quality and thickness of the wood of coffins, the dryness or moisture of the soil, and the age of the body. In an ordinary soil the bodies of adults decay (all but the large bones) in about ten or twelve years, and of children in about half that time; but in dense clay, coffins are scarcely affected after being buried thirty years, and sometimes very much longer. The regulations permit graves to be re-opened fourteen years after the burial of a person above twelve, and eight years after the burial of a child below twelve years of age. Generally, after these intervals, nothing but large bones will remain. If, however, decay should have been retarded, the coffins must not be broken or the remains dug up, nor must any soil which is offensive be disturbed, but if, after a sufficient interval to allow of the complete decay of the body, the coffin is still undecayed, a second coffin may be placed beside it without disturbing either it or any other coffin if wide grave spaces be allowed. It will rarely happen that it will be necessary to re-open graves so soon, as new burial grounds are generally provided of area sufficient to permit of much longer intervals between the burials in the same grave.

In order to give effect to these regulations, the area which is to be used for burial should be laid out in grave spaces, and a plan of the cemetery will be required, on which every grave space should be shown, with the marks of reference.

It is necessary, to avoid mistakes in the re-opening of graves, and for other important purposes, to keep a register of graves (as well as the register of burials required by the Burial Act), in which are to be recorded the name, age, and date of interment of every one buried in each grave, with reference to the marks in the burial ground, by which it may be identified. Very serious dissatisfaction has sometimes been caused by the register of graves having been carelessly kept, whereby graves, sold for the exclusive use of one family, have been intruded upon for the burial of others, the aggrieved families complaining of having lost that for which they have been highly charged and greatly value.

BURIALS IN VAULTS, &c.

Burials in vaults, &c.

Whenever vaults or walled graves are used, the regulations require, especially to prevent the escape of foul air when they are re-opened, that each coffin be separately entombed. This is generally done by placing immediately over each a flag or slab of stone resting upon a ledge in the wall, closely cemented down, to be never raised again. When this plan is adopted decay is much retarded, the gaseous products escape very gradually through the pores of the cement and brickwork, they are to a great extent decomposed, and appear to be diffused as fast as they escape, for when such vaults are opened the space above the slab covering the coffin is found free from offensive air. This method is not only cheaper but safer than the use of lead coffins, which are often not air-tight, sometimes burst, and are liable to be broken. Cases of such accident have occurred when the coffin has been air-tight and has confined putrid gas in a highly concentrated and dangerous state, very serious and even fatal injury having been sustained by those who were near when the coffin was broken ; and very frequently vaults containing bodies enclosed in lead are found to be offensive when opened for a subsequent burial, to avoid which it is not uncommon to leave openings for the escape of such foul air, to the evident risk of those who may go near them.

For these reasons the official regulations require that all coffins not buried in the soil shall be permanently entombed by stone or brickwork in an air-tight manner.

Sometimes the entombment is effected by means of concrete made by mixing about seven parts of clean coarse gravel, or stones broken small, with one part of quick lime and as much water as is needed to make mortar, in which the coffin is embedded, which hardens around it, enclosing it completely, and preventing any further escape of gases except such as slowly ooze through the pores of the artificial stone thus formed.

The surface of the graves should be covered with fresh turf, or planted with flowers or shrubs. High mounds are undesirable, being difficult to keep in order: a very small rise will mark the grave, if that be desired, and will not much obstruct the mowing of the grass. Covering stones are objectionable, as they prevent the free entrance of rain into the grave, retard decomposition, and postpone the period for re-opening. Headstones are free from this objection, but they are commonly made so large and of such forms as to be disfiguring. One of the easiest ways of increasing the beauty of a burial ground is to select a number of good designs for monuments, and to admit none else without special permission, on the design being approved by the burial board. It is common to leave the selection of the design to the nearest mason, who is not likely to be a person of refined taste, and the result is, that burial grounds are almost universally disfigured by badly designed monuments, often with inappropriate epitaphs.

CONVEYANCE OF THE DEAD.

Conveyance of the dead.

Burial boards are enabled by the 41st section of the Act of 1852 to make arrangements for facilitating the conveyance of the dead to the burial ground. Some boards have procured hearses, others have entered into contracts for the supply of hearses and carriages at a fixed price, accepting the offer they considered most for the benefit of the public. Others have procured wheeled biers or hand hearses, to diminish the labour of carrying the dead and avoid the necessity for employing a double set of bearers, which would otherwise be necessary

when the distance is considerable. A burial guild has very much reduced the cost of burial to its poorer members by lending pall, cloaks, and hoods; though such seems hardly to be the province of a burial board, the members individually might usefully assist their neighbours by forming voluntary associations for such purpose. Such a guild may effect all the useful purposes of a burial club without the danger supposed to attend the payment of money to those who have had care of the deceased. The arrangement proposed is that members of the guild should subscribe to raise a fund sufficient to insure the funeral expenses for such of them as may die, but that instead of paying any money to the friends of the deceased, payment is made direct to the undertaker employed by the guild to conduct the funeral as agreed. The undertaker being secure of payment, and desirous of retaining the business of the guild, charges much less than he otherwise could afford to do. While decent solemnity is observed, all useless expense for funeral display is discouraged, and poor families can thus be saved from the temptation to spend more than they can afford, often already impoverished by sickness and death in the household. The costs of funerals for the poor, who have a strong desire for a decent appearance at such times, can be much diminished by the guild lending them pall, cloaks, and hoods to cover the clothes of those who cannot buy new mourning. Such arrangements may not be exactly within the province of a burial board, but there are few ways in which the independent poor can be helped so much and so acceptably.

RECEPTION HOUSE.

Reception house.

The establishment of a place appropriate for the reception of the dead previous to interment would in some cases facilitate the conveyance of funerals and relieve the poor from risk of injury by the occasional long retention of the bodies of the dead in crowded dwellings, especially in cases of death from infectious diseases, such as small-pox, scarlet fever, &c.

The 42nd section of the Burial Act of 1852 authorises the establishment of such places, and much valuable information on the subject is contained in the Supplementary Report on the Practice of Interment in Towns, of 1843. As is therein

stated, p. 31, "In a large proportion of cases in the metropolis, and in some of the manufacturing districts, one room serves for one family of the labouring classes: it is their bedroom, their kitchen, their wash-house, their sitting-room, and their dining-room; and when they do not follow any out-door occupation, it is frequently their work-room and their shop. In this one room they are born, and live, and sleep, and die, amidst the other inmates." From a statistical inquiry instituted and carried out at the expense of the Earl of Harrowby by Mr. Weld, secretary of the Statistical Society, "it appeared that 1,465 families of the labouring classes (in the inner ward of St. George's, Hanover Square) had for their residence 2,175 rooms and 2,510 beds," and 623 out of 1,465 families had only one bed each.

Similar conditions prevail very extensively, as has been shown by evidence collected from all parts of the country, and given in the "Report on a General Scheme of Extramural Sepulture."

When death takes place in such overcrowded living-rooms the corpse is laid out and kept therein until the period of interment. It is sometimes stretched out on two chairs; or it occupies the only bed in the room; the inmates pursue their avocations around it; they eat beside it; the children play beside it; oftentimes the corpse is in an advanced state of putrefaction before it is removed for burial; offensive putrid effluvia are disengaged, and the spread of disease in consequence is not of unfrequent occurrence.

During epidemics all these evils are of course greatly aggravated. Overcrowded living-rooms furnish the largest number of attacks and deaths, and there is the greatest risk of the dead being unduly retained among the living, under the very circumstances where danger from such detention is the greatest. Instances are given in the report already cited of two and even three corpses lying in the house at the same time during the prevalence of the epidemic cholera of 1848–1849 (*a*). The danger from the long retention of the dead is apt to be greatest where the practice of Sunday funerals is continued. In such places it is not unusual to put off the funeral until the next Sunday at least, and often until the next

(*a*) Report on a General Scheme of Extramural Sepulture, p. 162.

but one. The proportion of bodies brought for burial in an offensive state is considerably larger on Sundays than on other days, because of such frequent postponement.

The object is to enable reception-houses for the dead to be provided wherever the local circumstances similar to those mentioned may appear to render such provision necessary. The use of these houses is optional; and hence it is advisable, wherever they are established, to make them attractive both in external appearance and in internal arrangements and management. In some of the more recently erected cemetery chapels an arrangement has been made which might serve some of the purposes of places for the temporary reception of the dead before burial, as well as their chief object, that of protecting the mourners attending the funeral services from annoying or dangerous emanations from the dead. In these chapels a portion has been divided off from the main building by a glass screen, which completely separates the part in which the coffins are placed from that occupied by the mourners, and it is easy to make this separated portion large enough to hold several coffins, where they might remain without danger until preparation is made for the funeral.

SIZE OF BURIAL GROUNDS.

Size of burial grounds.

The proper size of a burial ground depends upon the number of deaths rather than on the amount of population, as the death rate varies considerably according to the sanitary condition of the district and other circumstances. The burial space actually required may be approximately estimated from the following data :—

1st. The probable number of burials, making allowance for increase of population.

2nd. The size of the grave spaces, which may be on the average rather more or rather less than three square yards, according as the proportion of deaths among children is less or more than half of the total deaths.

3rd. The interval which must elapse before the graves can with propriety be re-opened, which depends partly upon the proportion of the deaths of young children, as the bodies of the young decay most rapidly; and partly on the character of the soil.

In addition to actual burial surface, some space, which is seldom less and often much more than one-sixth of the whole, will be wanted for approaches, roads, paths, sites for buildings, and for ornamental planting.

Burial boards have rarely thought it expedient to obtain no more land than would merely permit observance of the official regulations, but have almost invariably obtained enough to allow of much more lengthened periods for graves to remain unopened (*a*).

Burial boards have frequently no data for accurately estimating the proportion of persons likely to be buried according to the rites of the Church of England, and are consequently at a loss to determine what proportion of the land ought to be consecrated, and it is generally thought expedient to leave a part of the unconsecrated portion in the first instance unappropriated, to be added hereafter either to the consecrated or not consecrated portion, as may hereafter prove desirable, and thus avoid rendering it useless, which would happen if more were consecrated than necessary. This difficulty of estimating the proportion in which burials will be divided is another reason for securing rather more space than absolutely necessary.

Second burial ground.

The 3rd section of the Burials Amendment Act of 1857 authorises the establishment of more than one burial ground in a district. This is in some instances expedient; for example, when a district is so large that one burial ground, wheresoever

(*a*) In determining the size of cemeteries, there are considerations of economy, of taste, and of personal feeling. The first of these will have great weight in large towns, where land is extremely valuable; the latter will be more regarded in rural parishes, where land is cheap, and where, from the small number of funerals, persons are accustomed to see another generation pass away before the remains of the last are disturbed. The question of ornamental additions to the cemetery may be pretty equal in both cases; as in towns the greater value of some extended space which may serve for a public walk or cemetery garden, is a set off against the increased price of the land. It has, therefore, been found in practice, that no very general rule can be laid down in relation to the size of burial grounds, having regard to soil and population alone; and the question has been determined in various proportions in different parts of the country. It may be sufficient to state, that in a favourable soil, with purely sanitary and economical considerations in view, a quarter of an acre per thousand of the population would be sufficient; and that supposing feelings of delicacy as well as ornamental purposes to enter into the calculation, double that quantity would be a liberal allowance. In most cases it has been found that the larger quantity is preferred. [AUTHOR'S NOTE.]

situated, must be very distant from some part of it; or when the enlargement of a churchyard is desired, and it is impossible or inconvenient to provide burial ground for Nonconformists at the same place, or when it may be convenient to enlarge a chapel yard also, or to establish a separate burial ground for the use of Nonconformists.

Exemption from toll.

The 14th section of the Act of 1857 exempts from toll, after June, 1858, persons attending the funeral of any person buried in burial grounds provided under the Burial Acts for the place in which he died. This provision diminishes the objection sometimes urged against a site to reach which a toll-bar must be passed.

Measures of precaution.

The 23rd section of the Act of 1857 contains provisions to which it is desirable that attention should be directed. This section authorises Her Majesty in council to order such acts to be done by or under the direction of the churchwardens or such persons as may have care of any vaults or places of burial for preventing them becoming or continuing dangerous to the public health; the expense incurred to be paid out of the poor rates. This would provide for the burial or entombing of coffins which may be insufficiently enclosed in vaults beneath places of worship, or for the covering old burial grounds with grass, or the adoption of other precautions to prevent danger.

Sites for buildings.

It may sometimes be expedient to obtain, as the entrance to a new burial ground, or as sites for chapels or other buildings, an old burial ground which has been closed. This is authorised by the 26th section of the Act of 1857. Care will be requisite that no soil in an offensive condition or human remains be disturbed in digging foundations for buildings or otherwise: if the disturbance of such remains be unavoidable, the licence of the Secretary of State authorising their removal should be applied for. See 20 & 21 Vict. c. 81, s. 25, which prohibits the removal of any body or the remains of any body (except where a body is removed from one consecrated place of burial to another by faculty) without licence by the Secretary of State, and with such precautions as he may prescribe. The friends of persons buried in closed burial grounds sometimes desire to have them removed to the new burial grounds. This is illegal without such faculty, or the licence of the Secretary of

Removal of bodies.

State. The removal of only partially decayed remains cannot be safely effected without very carefully observed precautions.

Maintenance of closed burial grounds.

By the 18th section of the Burial Act of 1855 (18 & 19 Vict. c. 128), it is directed that the burial board or churchwardens, as the case may be, shall maintain a churchyard or burial ground of a parish, which has been closed for burial by order in council, in decent order, and repair the walls and fences, and that the costs shall be repaid from the poor rate if no other fund be legally chargeable. There are very many closed burial grounds which the churchwardens cannot keep in order, having no funds, and all income from burial fees having stopped. A very moderate expense would render many of these grounds ornamental instead of disfiguring, and it is much to be desired that such expense should be incurred, as it is very distressing to those whose friends have been interred, to see their resting place in a state of neglect and disorder.

HOME OFFICE RULES AND DIRECTIONS.

DIRECTIONS AS TO PROCEEDINGS UNDER THE BURIAL ACTS.

A.—URBAN DISTRICTS.

(*It is to be observed that these directions of the Home Office issued in December*, 1895, *supersede those issued in May*, 1887, *and prior thereto.*)

IT is to be noted that the provisions contained in sections 10 to 42 (both inclusive), and in sections 44, 50, 51, and 52 of the "Burial Act, 1852," which originally applied only to the metropolis are, by the enactment in section 7 of the "Burial Act, 1853," applied to parishes not in the metropolis.

It is also to be noted that—

(i) in *boroughs*, in which all or any of the burial grounds have been directed to be closed by an order in council, the town council may upon petition be constituted the burial board by order in council; 17 & 18 Vict. c. 87.

(ii) an urban district council which was formerly a *local board of health* acting as or created a board under any *local Act of Parliament* has all the powers of a burial board; 18 & 19 Vict. c. 128, s. 20.

(iii) in urban districts, other than those referred to in (i) and (ii), in which all or any of the burial grounds have been directed to be closed by an order in council, and for which no burial board has been already appointed, the urban district council may upon petition be constituted the burial board for the district by order in council. 20 & 21 Vict. c. 81, s. 4.

(iv) in municipal boroughs or any other urban district, the council or some other representative body within the district may have conferred on it, by order of the 56 & 57 Vict. c. 73, s. 33.

Local Government Board, the powers, duties, or liabilities of a parish council with regard to the execution of the Burial Acts.

17 & 18 Vict. c. 87, s. 2. 20 & 21 Vict. c. 81, s. 4. In the case of a district council which is constituted a burial board by an order in council, no approval, sanction, or authorisation of any vestry in respect of any proceedings under the Burial Acts will be necessary.

ADOPTION OF ACTS.

15 & 16 Vict. c. 85, s. 10. 18 & 19 Vict. c. 128, s. 12. 20 & 21 Vict. c. 81, s. 5. Vestry meeting. 1. A meeting of the vestry or in the nature of a vestry, of a parish (poor law or ecclesiastical), or of a district for which such meetings have been accustomed to be held, is *required by law* to be convened by the churchwardens, or other persons to whom it belongs to convene such meetings, to consider whether a burial ground shall be provided under the Burial Acts for such parish or district, on the following occasions:

Ibid. (*a.*) Upon the requisition in writing of 10 or more ratepayers of any parish in which the place or places of burial shall appear to such ratepayers insufficient or dangerous to health.

18 & 19 Vict. c. 128, s. 3. (*b.*) Where notice is given of the intention of the Secretary of State to represent to Her Majesty in council that burials should be discontinued wholly or in part in any burial ground in the parish.

Ibid. Also the same authorised persons may convene a vestry at any time at their discretion to determine the same question.

15 & 16 Vict. c. 85, s. 10. 2. Public notice must be given of such vestry meeting, and the place and hour of holding the same, and the special purposes thereof in the usual manner in which notices of the meeting of the vestry are given, at least seven days before holding the vestry.

Ibid. 3. If the vestry propose to adopt the Burial Acts they should pass a resolution in the following terms:—

"That a burial *ground* under the Burial Acts shall be provided for the parish of ."

56 & 57 Vict. c. 73, s. 62 (2). 4. Such resolution must receive the approval of the district council.

5. A copy of such resolution, extracted from the minutes of the vestry and signed by the chairman, must be sent to the Secretary of State. 56 & 57 Vict. c. 73, s. 62 (2).

6. If such resolution be passed by the vestry and approved by the council of the district and a copy sent as above described, the vestry may proceed to appoint a burial board without further reference to the Secretary of State, except as follows :— 15 & 16 Vict. c. 85, s. 11.

In cases—

(1.) "Where a parish or place has been united with any other parish or place, parishes or places for all or any ecclesiastical purposes,"

or

(2.) "Where two or more parishes or places have heretofore had a church or a burial ground for their joint use,"

or

(3.) "Where the inhabitants of several parishes or places have been accustomed to meet in one vestry for purposes common to such several parishes or places."

Cases where approval of Secretary of State is required before appointment of burial board.

20 & 21 Vict. c. 81, s. 9.

In such cases—notwithstanding that by 18 & 19 Vict. c. 128, s. 11, power is given to the vestry or meeting in the nature of a vestry of such several parishes or places (and whether any one or more of them do or do not separately maintain its own poor) to appoint a burial board and exercise such powers therein referred to as are vested in the vestry of a parish or place separately maintaining its own poor,—nevertheless, if any of the several parishes or places—

(*a.*) "separately maintains its own poor," or

(*b.*) "has a separate burial ground,"

it shall not be lawful for the vestry or meeting in the nature of a vestry of such several parishes or places to appoint a burial board under 18 & 19 Vict. c. 128, s. 11, without the approval of one of Her Majesty's principal Secretaries of State.

(4.) Also—

"Where any parish or place has been divided into two or more parts or districts for all or any ecclesiastical

23 & 24 Vict. c. 64, s. 4.

purposes, and any one of such parts has a separate burial ground, it shall not be lawful for the vestry or meeting in the nature of a vestry for such entire parish or place to appoint a burial board without the approval of one of Her Majesty's principal Secretaries of State."

20 & 21 Vict. c. 81, s. 9.

7. In any case where the approval of the Secretary of State is necessary it shall be applied for as follows. *After* the vestry have passed the resolution already described of their intention to provide such burial ground, and *before* they take any further proceedings, they must pass a resolution in the following terms :—

34 & 35 Vict. c. 33, s. 1.

"*That it is expedient that a burial* board *shall be appointed under the Burials Acts for the parish* (*or district*) *of* , *which includes the parishes or portions of the parishes of* (*), *and of* (*), *each of which has a separate burial ground* [or] *is separately rated to the poor.*"

* *Specify here the parishes or portions of parishes having separate burial grounds.*

And submit such resolution to the Secretary of State for his approval.

8. When making application for such approval it should be stated in what manner the ratepayers in each and all of the districts to be affected have been informed of what is proposed, and whether or not there is any opposition, and, if there be, by whom and for what alleged reasons.

9. If the Secretary of State decides to approve the resolution of the vestry, he will signify his approval by letter from the Home Office; and on receiving such approval, the vestry will proceed to elect the members of the burial board as in the first instance.

20 & 21 Vict. c. 81, s. 9.

10. If, however, it appear to the Secretary of State that any of such parishes or places has a sufficient burial ground, or that otherwise it would not be expedient that the powers given by the Burial Act, 1855, should be exercised in relation to such parish or place, the Secretary of State may direct that such parish or place shall be excepted; and the inhabitants of the remaining parish or parishes, place or places, may assemble in vestry or in a meeting in the nature of a vestry, from time to time, and in such vestry or meeting may proceed in like

manner in all respects as if the inhabitants of such last-mentioned parish or parishes, place or places, exclusively had a vestry for their common purposes, and were wholly unconnected with the parish or place so excepted.

Burial board. 15 & 16 Vict. c. 85, s. 11.

11. Subject to the conditions as to the approval of the Secretary of State, the vestry must appoint a burial board, consisting of not less than three, and not more than nine members, of whom the incumbent, though not a ratepayer, may be one.

15 & 16 Vict. c. 85, s. 19.

12. The expenses proposed to be incurred by the burial board in purchasing and laying out a burial ground in pursuance of their powers to that effect, and in building chapels, &c., thereon, must be sanctioned by the vestry of the parish; to provide funds for meeting such expenses, the board, with the sanction of the vestry and approval of the Treasury, may borrow money, and the Public Works Loan Commissioners are empowered to advance money to the board on security of the poor rates, to be repaid by any number of annual instalments, not exceeding 20.

Ibid. ss. 20 and 21.

Attention is called to the provisions of sections 19 to 21 of the Burial Act, 1857, respecting loans raised by a burial board.

13. It is necessary that all the proceedings in respect of the appointment of a burial board should be strictly regular, inasmuch as a loan if required by the board could not be raised were any doubt to exist as to the validity of the security.

(*R.* v. *Wright*, 8 Jur. N. S. 260.)

56 & 57 Vict. c. 73, s. 62.

14. The council of any urban district may by resolution cause to be transferred to itself the powers, duties, property, debts, and liabilities of any burial board existing in its district.

PROVIDING OF BURIAL GROUNDS.

Where approval of Secretary of State to the site is necessary. 16 & 17 Vict. c. 134, s. 1.

15. By the Burial Act, 1853, power was given to the Queen in council, upon a representation from the Secretary of State to such effect, to order that no new burial ground shall be opened in any city or town or within any other limit save with the previous approval of the Secretary of State; and it has been the invariable practice, whenever an order in council has been made for discontinuing burials in any churchyard or burial ground in any city, town, or parish, at the same time

also to order that no new burial ground shall be opened within such limits without such previous approval.

16. If, therefore, any such order in council has been made affecting any parish or place the burial board should take care to obtain the approval of the Secretary of State for the site of the new burial ground, and in purchasing land should be careful to contract subject to such approval. A new burial ground so approved cannot be afterwards closed by any proceedings under the Burial Acts.

15 & 16 Vict. c. 85, s. 7.

17. A parish in respect of which no such order in council has been made, and in which the Burial Acts have been adopted, may provide a burial ground, without obtaining the approval of the Secretary of State for the site. In the absence of such approval, however, the ground would be liable to be afterwards closed by order in council under the Burial Acts: or again, if an order in council affecting the parish, though not closing the ground, were subsequently made, any addition to the ground which might be found necessary after the making of the order, would require the approval of the Secretary of State, and the fitness of the site would be a matter which would require to be considered before such approval could be given. It is desirable, therefore, on these grounds, and also as a matter of sanitary precaution, that in *all* cases the approval of the Secretary of State should be secured prior to the purchase of the land.

15 & 16 Vict. c. 85, s. 25.

18. A burial ground may be situate either within or without the limits of the parish or parishes for which it is provided; but the burial board are bound to have regard to the conveniences of access thereto from the parish or parishes for which it is provided.

Division into consecrated and unconsecrated parts and allotment. 15 & 16 Vict. c. 85, s. 30. 16 & 17 Vict. c. 134, s. 7.

19. It is required by law that a new burial ground under the Burial Acts shall be divided into consecrated and unconsecrated parts, and the unconsecrated part shall be allotted in such manner and in such portions as may be sanctioned by the Secretary of State; *except* (1) where such new burial ground is at once assimilated to the parish churchyard, which assimilation can be effected if the vestry, at a meeting *specially* called for the purpose, *unanimously* resolve that such new ground shall be held and used in all respects as the existing churchyard, but in that case another ground not consecrated

may be provided if action for the purpose be taken within ten years; *or* (2) where, with the approval of the Secretary of State, the burial board provides separate and distinct grounds to be used respectively as consecrated and unconsecrated burial grounds. 18 & 19 Vict. c. 128, s. 10. 20 & 21 Vict. c. 81, s. 3.

20. As the division of a new burial ground into consecrated and unconsecrated parts, and an allotment of the unconsecrated part into portions should depend upon an approximate estimate of the proportion between the numbers of the inhabitants in the parish attached to the Established Church, and of those who are Nonconformist, distinguishing amongst the latter those who, like Jews or Roman Catholics, may wish for a separate allotment for their own use, it is desirable that, in submitting the site of a new burial ground for the approval of the Secretary of State, the burial board should at the same time submit for his approval a plan showing the proposed division of such burial ground into consecrated and unconsecrated portions, and also the proposed allotment, if any, of the unconsecrated portion; and, if there be no allotment submitted, that it should be explained why it appears that there is no necessity for an allotment.

Surplus land.

21. If a burial board, from the exigencies of the case, find themselves possessed of more land than is required for the purposes of a burial ground for the district, they may either sell the superfluous land subject to the approval of the vestry, or they may let the same subject to the approval of the Secretary of State, and subject to regulations approved by him, power, however, being reserved to the board to resume possession upon giving six months' notice. 15 & 16 Vict. c. 85, s. 28. 18 & 19 Vict. c. 128, s. 17.

22. A burial board may build a chapel for the performance of burial service according to the rites of the Church of England, and the plans of such chapel are subject to the approval of the bishop. 15 & 16 Vict. c. 85, s. 30.

23. If they build such chapel the burial board are bound also to build a chapel on the unconsecrated part of the burial ground for the performance of burial service by Nonconformists, and the plans of such unconsecrated chapel must be submitted for the approval of the Secretary of State. 16 & 17 Vict. c. 134, s. 7.

24. If, however, the vestry of the parish resolve, by a majority containing not less than three-fourths of its members, 18 & 19 Vict. c. 128, s. 14.

that it is unnecessary and undesirable to provide such unconsecrated chapel, then on receiving a representation to that effect, and on being satisfied that every legal notice of the holding of such vestry was duly given, the Secretary of State may signify his opinion in the same sense to the burial board, and the burial board will be relieved from the obligation to provide such chapel.

25. If the burial board determine that there is no necessity to provide a chapel on the consecrated part of the ground, there is nothing to prevent their nevertheless providing a chapel for the unconsecrated portion of the ground, and it is held that in such case the proviso in sec. 7 of the Act 16 & 17 Vict. cap. 134 is not applicable, and that the plans do not require the approval of the Secretary of State.

Fees.
15 & 16 Vict. c. 85, s. 34.
18 & 19 Vict. c. 128, s. 7.

26. The burial board fix and settle fees and payments in respect of interments and other services connected therewith in the new burial ground, subject to the approval of the Secretary of State.

27. The Secretary of State requires evidence that the proposed scale of fees has been published in the district to which it applies at sufficient time to allow of objections being made. Such publication should be by advertisement in a local newspaper, and by affixing the scale of fees to the doors of all churches and chapels in the district, for not less than three weeks before application is made for approval.

28. The scale of fees submitted for approval should contain the fees payable to the burial board only, and should be authenticated by the signature of the chairman or by the seal of the board.

29. Any alteration in or revision of an approved scale of fees must be similarly submitted for the approval of the Secretary of State.

30. The fees to the incumbent, clerk, and sexton are provided for separately in the Burial Acts, and should not appear in the table submitted for the approval of the Secretary of State. The burial authority has no power to fix, settle, or exact fees or payments in respect of the services of Nonconformist ministers in any part of the burial ground.

WHITEHALL,
December, 1895.

HOME OFFICE RULES AND DIRECTIONS.

Directions as to Proceedings under the Burial Acts.

B.—RURAL PARISHES.

(*It is to be observed that these directions of the Home Office issued December*, 1895, *supersede those issued in May*, 1887, *and prior thereto.*)

It is to be noted that the provisions contained in sections 10 to 42 (both inclusive), and in sections 44, 50, 51, and 52 of the Burial Act, 1852, which originally applied only to the metropolis, are, by the enactment in section 7 of the Burial Act, 1853, applied to parishes not in the metropolis.

In every rural parish, the parish meeting, exclusively, has the power of adopting the Burial Acts for that parish. When the Acts have been adopted by the parish meeting, the parish council, if any, will be the authority for the execution of the Acts; in parishes having no parish council, the parish meeting can only act as the authority if specially authorised by the county council, and, if not so authorised, must appoint a burial board under the Acts. 56 & 57 Vict. c. 73, s. 7.

It is to be noted with regard to ecclesiastical parishes or districts made up of more than one or portions of more than one civil parish, that notwithstanding such a district may have had a churchyard or burial ground in common for the use of the district, or its ratepayers have customarily met in one vestry for purposes common to all, the vestry or meeting in the nature of the vestry can no longer (since the Local Government Act, 1894, came into force) proceed under the Burial Acts. A burial ground can only be provided for such a parish by the separate civil parishes or portions of civil parishes (if such portions are portions which under the Burial Acts and sec. 7 (4) of the Local Government Act, 1894, have

the power) adopting the Acts severally and concurring in the manner indicated in clause 13 below to provide a burial ground in common.

56 & 57 Vict. c. 73, s. 53. Where the Burial Acts were, on the day on which the Local Government Act, 1894, came into force, in force in part only of a rural parish, the burial board or the parish meeting for that part may transfer the powers, duties, and liabilities of the board to the parish council, subject to any conditions with respect to the execution thereof by means of a committee as the board or parish meeting may think fit. Such conditions may be altered by the parish meeting.

The county council, on the application of a parish council, may by order alter the boundaries of the area which was under any burial board on the day on which the Local Government Act, 1894, came into force.

ADOPTION OF ACTS.

1. A parish meeting for the purpose of considering whether the Burial Acts should be adopted for the parish—

56 & 57 Vict. c. 73, s. 45. (*a*) *may* be convened by the chairman of the parish council, or any two parish councillors, or the chairman of the parish meeting, or any six parochial electors;

18 & 19 Vict. c. 128, s. 3. 56 & 57 Vict. c. 73, s. 6, (1)(*b*). (*b*) *must* be convened by the chairman of the parish council when notice is given of the intention of the Secretary of State to represent to Her Majesty in council that burials should be discontinued wholly or in part in any burial ground in the parish.

56 & 57 Vict. c. 73, s. 51, Sched. I. Part I. (2) (3). 2. Not less than fourteen days before such meeting is held, public notice thereof, specifying the time and place of the intended meeting, and the business to be transacted at the meeting, and signed by the chairman of the parish council or other conveners of the meeting, shall be given in the manner required for giving notice of vestry meetings (*i.e.* by affixing the notice previously to the commencement of divine service on some Sunday on or near the doors of all churches and chapels within the parish) and by posting the notice in some conspicuous place or places within the parish, and in such other manner (if any) as appears to the persons convening the meeting desirable for giving publicity to the notice.

3. The passing by the parish meeting of a resolution to provide a burial ground under the Burial Acts, 1852 to 1885, is an adoption of the Acts. 56 & 57 Vict. c. 73, s. 7 (8).

A bare majority of those present and voting is sufficient to carry the resolution, and the chairman shall announce his decision as to the result, which decision shall be final unless a poll is demanded. A poll may be demanded by any one parochial elector at any time before the conclusion of the meeting. 56 & 57 Vict. c. 73, Sched. I. Part I. (5, 6, 7).

4. A copy of such resolution, extracted from the minutes of the meeting and signed by the chairman, must be sent to the Secretary of State. 15 & 16 Vict. c. 85, s. 10.

5. If such resolution be passed and a copy sent as above described, no further reference to the Secretary of State, except in the circumstances specified in the following clause, will be necessary; and thereupon the parish council becomes the authority for the execution of the Acts, or if the parish has not a parish council, the parish meeting may appoint a burial board under the Acts, or may apply to the county council to confer on the meeting the powers under the Burial Acts which would belong to the parish council were there one for the parish. 56 & 57 Vict. c. 73, s. 7 (7). *Ibid.* s. 19 (4). *Ibid.* s. 19 (10).

6. Where any parish has been divided into two or more parts or districts for all or any ecclesiastical purposes, and any one of such parts has a separate burial ground, it shall not be lawful for the parish meeting for such entire parish to adopt the Burial Acts without the approval of one of Her Majesty's principal Secretaries of State. 23 & 24 Vict. c. 64, s. 4.

7. In such a case the parish meeting, instead of passing the resolution already described to adopt the Burial Acts for the parish, should pass a resolution in the following terms:

"That it is expedient that the Burial Acts shall be adopted, and a burial ground provided under those Acts, for the parish of , which includes the part or district of (*), and of (*), each of which has a separate burial ground." And submit such resolution to the Secretary of State for his approval. 34 & 35 Vict. c. 33, s. 1.

* *Specify here the parts or districts having separate burial grounds.*

8. When making application for such approval it should be stated in what manner the parochial electors in each and all of the districts to be affected had been informed of what is

proposed, and whether or not there is any opposition, and, if there be, by whom and for what alleged reasons.

9. If the Secretary of State decides to approve such resolution of the parish meeting, he will signify his approval by letter from the Home Office; and on receiving such approval, the parish council or parish meeting may proceed respectively in the manner specified in clause 5 above.

20 & 21 Vict. c. 81, s. 9. 10. If, however, it appear to the Secretary of State that any of such parts or districts has a sufficient burial ground, or that otherwise it would not be expedient that the powers should be exercised in relation to such part or district, the Secretary of State may direct that such part or district shall be excepted; 56 & 57 Vict. c. 73, s. 7 (7). the authority for the execution of the Acts in the remaining part or parts of the parish will nevertheless be the parish council where a council is elected for the parish.

56 & 57 Vict. c. 73, s. 7 (4). 11. Where any of the places for which a burial board might have been appointed forms a part only of a rural parish, the *Ibid.* s. 49. Burial Acts may be adopted for such part by a parish meeting held for that part. The persons entitled to attend and vote at such meeting, or at any poll consequent thereon, are the parochial electors registered in respect of qualifications in that part, and the provisions applicable to parish meetings for the whole of a parish, including the provisions with respect to the convening of a parish meeting by parochial electors, shall apply as if the part were the whole parish. If the Burial Acts are adopted, the parish council (if any) becomes the authority for their execution in the part for which they have been adopted, but the parish meeting for such part may require the *Ibid.* s. 56 (2). parish council to appoint annually to exercise its powers and duties under those Acts a committee consisting partly of members of the council and partly of other persons representing the said part of the parish.

15 & 16 Vict. c. 85, s. 19. 12. The expenses proposed to be incurred by the burial authority in purchasing and laying out a burial ground in *Ibid.* s. 20. pursuance of their powers to that effect, and in building chapels, &c., thereon, must be sanctioned by the parish 56 & 57 Vict. c. 73, s. 12. meeting, and to provide funds for meeting such expenses the parish council may, with the consent of the county council and the Local Government Board, borrow money on the security of the poor rate in like manner and subject to the

like conditions as a local authority may borrow for defraying expenses incurred in the execution of the Public Health Acts.

13. The parish councils of two or more parishes, the parish meetings of which have severally adopted the Acts, may concur in providing one burial ground for the common use of such parishes. For this purpose the councils must appoint out of their respective bodies a joint committee, and may confer on such committee any powers, except the power of borrowing money or making any rate, which the appointing councils might have separately exercised under the Burial Acts in relation to their own parishes. 56 & 57 Vict. c. 72, s. 57. 15 & 16 Vict. c. 85, s. 23.

PROVIDING OF BURIAL GROUNDS.

14. By the Burial Act, 1853, power was given to the Queen in council, upon a representation from the Secretary of State to such effect, to order that no new burial ground shall be opened in any city or town or within any other limits save with the previous approval of the Secretary of State; and it has been the invariable practice, whenever an order in council has been made for discontinuing burials in any churchyard or burial ground in any city, town, or parish, at the same time also to order no new burial ground shall be opened within such limits without such previous approval. Where approval of Secretary of State to the site is necessary. 16 & 17 Vict. c. 134, s. 1.

15. If, therefore, any such order in council has been made affecting any parish or part of a parish, the burial authority should take care to obtain the approval of the Secretary of State for the site of the new burial ground, and in purchasing land should be careful to contract subject to such approval. A new burial ground so approved cannot be afterwards closed by any proceedings under the Burial Acts. 15 & 16 Vict. c. 85, s. 7.

16. A parish, in respect of which no such order in council has been made, and in which the Burial Acts have been adopted, may provide a burial ground, without obtaining the approval of the Secretary of State for the site. In the absence of such approval, however, the ground would be liable to be afterwards closed by order in council under the Burial Acts; or if an order in council affecting the parish, though not closing the ground, were subsequently made, any addition to the ground which might be found necessary after the making of the

order would require the approval of the Secretary of State, and the fitness of the original site would be a matter which would require to be considered before such approval could be given. It is desirable therefore on these grounds, and also as a matter of sanitary precaution, that in *all* cases the approval of the Secretary of State should be secured prior to the purchase of the land.

15 & 16 Vict. c. 85, s. 25.

17. A burial ground may be situate either within or without the limits of the parish or parishes for which it is provided; but the burial authority are bound to have regard to the conveniences of access thereto from the parish or parishes for which it is provided.

Division into consecrated and unconsecrated parts and allotment.

15 & 16 Vict. c. 85, s. 30. 16 & 17 Vict. c. 134, s. 7. 18 & 19 Vict. c. 128, s. 10. 20 & 21 Vict. c. 81, s. 3.

18. It is required by law that a new burial ground under the Burial Acts shall be divided into consecrated and unconsecrated parts, and the unconsecrated part shall be allotted in such manner and in such portions as may be sanctioned by the Secretary of State; *except* (1) where such new burial ground is at once assimilated to the parish churchyard, which assimilation can be effected if the parish council, or, where the authority is a burial board, the parish meeting, at a meeting *specially* called for the purpose, *unanimously* resolve that such new ground shall be held and used in all respects as the existing churchyard, but in that case another ground not consecrated may be provided if action for the purpose be taken within 10 years; *or* (2) where, with the approval of the Secretary of State, the burial authority provides separate and distinct grounds to be used respectively as consecrated and unconsecrated burial grounds.

19. As the division of a new burial ground into consecrated and unconsecrated parts, and an allotment of the unconsecrated part into portions should depend upon an approximate estimate of the proportion between the numbers of the inhabitants in the parish attached to the Established Church, and of those who are Nonconformist, distinguishing amongst the latter those who, like Jews or Roman Catholics, may wish for a separate allotment for their own use, it is desirable that, in submitting the site of a new burial ground for the approval of the Secretary of State, the burial authority should at the same time submit for his approval a plan showing the proposed division of such burial ground into consecrated and unconsecrated

portions, and also the proposed allotment, if any, of the unconsecrated portion; and, if there be no allotment submitted, that it should be explained why it appears that there is no necessity for an allotment.

Surplus land.

20. If a burial authority, from the exigencies of the case, find themselves possessed of more land than is required for the purpose of a burial ground for the district, they may either sell the superfluous land or they may let the same subject to the approval of the Secretary of State, and subject to regulations approved by him, power, however, being reserved to the burial authority to resume possession upon giving six months' notice. 15 & 16 Vict. c. 85, s. 28. 18 & 19 Vict. c. 128, s. 17.

In cases where the parish council is the burial authority, the provisions of sec. 8 (2) of the Local Government Act, 1894, will apply, but not in substitution for the above.

21. A burial authority may build a chapel for the performance of burial service according to the rites of the Church of England, and the plans of such chapel are subject to the approval of the bishop. 15 & 16 Vict. c. 85, s. 30.

22. If they build such chapel the burial authority are bound also to build a chapel on the unconsecrated part of the burial ground for the performance of burial service by Nonconformists, and the plans of such unconsecrated chapel must be submitted for the approval of the Secretary of State. 16 & 17 Vict. c. 134, s. 7.

23. If, however, the parish council, or, in a parish not having a parish council, the parish meeting resolve, by a majority containing not less than three-fourths of its members, that it is unnecessary and undesirable to provide such unconsecrated chapel, then on receiving a representation to that effect, and on being satisfied that every legal notice of the holding of the meeting of such authority was duly given, the Secretary of State may signify his opinion in the same sense to the burial authority, and the burial authority will be relieved from the obligation to provide such chapel. 18 & 19 Vict. c. 128, s. 14.

24. If the burial authority determine that there is no necessity to provide a chapel on the consecrated part of the ground, there is nothing to prevent their nevertheless providing a chapel for the unconsecrated portion of the ground, and it is held that in such case the proviso in sec. 7 of the Act 16 & 17 Vict. cap. 134, is not applicable, and that the plans do not require the approval of the Secretary of State.

Fees. 15 & 1 Vict. c. 85, s. 34. 18 & 19 Vict. c. 128, s. 7.

25. The burial authority fix and settle fees and payments in respect of interments and other services connected therewith in the new burial ground subject to the approval of the Secretary of State.

26. The Secretary of State requires evidence that the proposed scale of fees has been published in the district to which it applies a sufficient time to allow of objections being made. Such publication should be by advertisement in a local newspaper and by affixing the scale of fees to the doors of all churches and chapels in the district for not less than three weeks before application is made for approval.

27. The scale of fees submitted for approval should contain the fees payable to the burial authority only, and should be authenticated by the signature of the chairman.

28. Any alteration in or revision of an approved scale of fees must be similarly submitted for the approval of the Secretary of State.

29. The fees to the incumbent, clerk, and sexton are provided for separately in the Burial Acts, and should not appear in the table submitted for the approval of the Secretary of State. The burial authority has no power to fix, settle, or exact fees or payments in respect of the services of Nonconformist ministers in any part of the burial ground.

WHITEHALL,
December, 1895.

REGULATIONS FOR BURIAL GROUNDS PROVIDED UNDER THE ACTS 15 & 16 VICT. C. 85; 16 & 17 VICT. C. 134; 17 & 18 VICT. C. 87; 18 & 19 VICT. C. 128, AND 20 & 21 VICT. C. 81.

I. The Burial Ground shall be effectually fenced, and, if necessary, under-drained to such a depth as will prevent water remaining in any Grave or Vault.

II. The area to be used for Graves shall be divided in Grave spaces, to be designated by convenient marks, so that the position of each may be readily determined, and a corresponding Plan kept on which each Grave space shall be shown.

III. The Grave spaces for the burial of Persons above 12 years of age shall be at least 9 feet by 4 feet; and those for the burial of Children under 12 years of age, 6 feet by 3 feet, or, if preferred, half the measurement of the Adult Grave space, namely, $4\frac{1}{2}$ feet by 4 feet.

IV. A Register of Graves shall be kept, in which the name, age, and date of burial in each shall be duly registered.

V. No body shall be buried in any Vault or Walled Grave unless the Coffin be separately entombed in an air-tight manner; that is, by properly cemented Stone or Brick work, which shall never be disturbed.

VI. One body only shall be buried in an unwalled Grave at one time, unless the bodies be those of members of the same family.

VII. No unwalled Grave shall be reopened within 14 years after the burial of a Person above 12 years of age, or within 8 years after the burial of a Child under 12 years of age, unless to bury another member of the same family; in which case a layer of earth not less than one foot thick shall be left undisturbed above the previously buried coffin; but if, on reopening any Grave, the soil be found to be offensive, such soil shall not be disturbed, and in no case shall human remains be removed from the Grave.

VIII. No Coffin shall be buried in any unwalled Grave within 4 feet of the ordinary level of the ground, unless it contains the body of a Child under 12 years, when it shall not be less than 3 feet below that level.

Home Office Circular Letters and Questions in Proceeding under the Burial Acts.

PROPOSED NEW BURIAL GROUND.

BURIAL ACTS OFFICE,
HOME OFFICE,
Westminster, S.W.,
189 .

I beg to inform you that I have been directed by the Secretary of State to report upon the site selected for a Burial Ground at

I have, therefore, to request that you will have the goodness to forward to me, at this Office, Replies to such of the annexed Queries as you may be able to furnish; together with a tracing (in duplicate) of the Ground, and Surveyor's Certificate.

You will oblige me by subjoining any further information in your power.

I am,
Your obedient Servant,
H. W. HOFFMAN,
Medical Inspector.

Burial Acts, 15 & 16 Vict. c. 85; 16 & 17 Vict. c. 134; 17 & 18 Vict. c. 87; 20 & 21 Vict. c. 81, &c.

* *Parish, Township, or Borough.* } for the*_____ of_____

QUERIES.	REPLIES.
1. By what number of persons is the intended Burial Ground likely to be used?	
2. What has been the average number of burials annually for a period of ten years? and how many per annum are expected?	
3. What is the area of the proposed Ground?	

QUERIES.	REPLIES.
4. (*a*) What is its distance from the nearest inhabited part of the Burial district, (*b*) from the mass of the population, (*c*) and also from the remotest part of the district?	
5. What is the distance from the nearest dwelling-house to the boundary of the Ground?	
6. Are there any, and if so (*a*) how many, dwellings within 100 yards of the part to be used for Burial? (*b*) and have the consents, in writing, of the owners, lessees, and occupiers of such dwellings been obtained?	
7. Have the Local Authorities and the Medical Officer of Health for the district been consulted in the matter? Is any one known to object to the site proposed? and, if so, for what alleged reasons?	
8. Describe the existing means of access to the Ground, and state whether it will be necessary to make any new road to it.	
9. What is the nature of the soil, as ascertained by trial holes at least eight feet deep?	
10. Is water found, and at what depth?	
11. (*a*) Can the ground be thoroughly drained? If so, (*b*) will the drainage flow into any water now used, or likely to be used, for domestic purposes; (*c*) at what distance are the nearest pumps or wells supplying water for drinking from the boundary?	

QUERIES.	REPLIES.
12. Has any other ground been proposed? if so, why has this been preferred?	
Send *in duplicate* tracings in cloth of the plan of the Ground, drawn to scale, with a sufficient description for its identification; having the position of the trial holes marked upon it (see Query 9); and showing, by a key plan, the situation of the Ground with respect to the Town, adjoining property, and points of the compass.	
Send Surveyor's Certificate, stating whether the Ground can be thoroughly drained to the depth of eight feet at least; and as to the outlet for the drainage mentioned in Query 11.	
State the name by which the site is *now* best known?	
What is the number on the Tythe or other public Map?	

BURIAL ACTS OFFICE,
Westminster, S.W.

BURIAL ACTS OFFICE,
Westminster, S.W.
189 .

GENTLEMEN,

I am instructed in pursuance of the Acts for amending the Laws concerning the Burial of the Dead, to report to the Secretary of State upon

I therefore shall feel obliged by your filling up the replies respecting it, and returning them to me as soon as convenient.

I am, Gentlemen,
Your obedient Servant,
H. W. HOFFMAN,
Medical Inspector.

To the Incumbent and Churchwardens.

BURIAL ACTS DEPARTMENT,
Home Office, Westminster.

Act to amend the Laws concerning the Burial of the Dead in England beyond the Limits of the Metropolis.

QUERIES.	REPLIES.
1st. Name of County	
2nd. Name of Town.....	
3rd. Name of Parish { (*a*) Civil (*b*) Ecclesiastical	
4th. Name of Burial Ground and Date of Opening for Burial.....	
5th. Area of Burial Ground.....	
6th. (*a*) Nature of Soil. (*b*) Is it wet?.....	
7th. Population using the Burial Ground.....	
8th. Total Annual Number of Interments for the last ten years, each year separately	
.....	
.....	
.....	
.....	
9th. Number of Family Vaults and Walled Graves in the Burial Ground likely to be used in future....	
10th. Usual depth of Grave.....	
11th. Area allotted to each Grave, or the space between the Graves	
12th. Number of Bodies buried in a Grave.....	
13th. Amount of Ground which has never hitherto been used for Interments....	

QUERIES.	REPLIES.
14th. Whether any Burials within Church or Chapel; if so—state their annual average number.....	
15th. Whether any Burials in Vaults under Church or Chapel; if so—state their average annual number.....	

(Please give the name and distance of your Railway Station.)

(Signed.)

N.B.—It may save trouble, in the event of miscarriage, to keep a Copy of the Replies made to the above Queries.

Questions to be answered on application to remove buried remains.

BURIAL ACTS DEPARTMENT,
Home Office,
189 .

I am instructed to report on an application for license to remove remains of
from a grave or vault in the Cemetery or Burial Ground, and shall be obliged if you will let me have replies to the following questions:—

I am,
Your obedient Servant,
H. W. HOFFMAN,
Medical Inspector.

1. How long has the deceased been buried?
2. What was the name and age of the deceased?
3. Can the coffin be removed without disturbing any other coffin, and without any unusual difficulty?

4. Is the coffin in consecrated ground?
5. Do the authorities of the Burial Ground object to the removal?
6. Where is the coffin to be re-buried?
7. What was the cause of death?

(Signed.)

Removal of

1. What relative are you to the deceased; or on behalf of what relative are you acting, and in what capacity?
2. Is there any other nearer relative; and, if so, what relative; and does that relative consent to the proposed removal?
3. Are you aware of any objection being entertained by any of the relatives of the deceased to the proposed removal?

.....

The answers to the above three questions are to be embodied in a Statutory Declaration, under 5 & 6 Will. IV. c. 62, *duly stamped.*

THE LOCAL GOVERNMENT BOARD DIRECTIONS AND BYE-LAWS.

PUBLIC HEALTH (INTERMENTS) ACT, 1879. (42 & 43 Vict. c. 31.)

Local Government Board, Whitehall, S.W.
19th August, 1879.

SIR,—I am directed by the President of the Local Government Board to request that you will bring under the notice of the sanitary authority the provisions of the Public Health (Interments) Act, 1879 (42 & 43 Vict. c. 31), which received the Royal Assent and came into operation on the 21st of July last.

The object of the Act is to enable sanitary authorities, rural as well as urban, to provide cemeteries for their districts, and for this purpose all the provisions of the Public Health Act, 1875, with respect to a mortuary are extended to a cemetery.

As the sanitary authority are aware, s. 141 of the Public Health Act enables a sanitary authority to provide and fit up a proper place as a mortuary for the reception of dead bodies before interment, and to make bye-laws with respect to the management and charges for the use of the same, and it is moreover compulsory on a sanitary authority to provide a mortuary if they should be required by the Local Government Board to do so.

The effect, therefore, of the Act, which has just been passed, is, in like manner, to empower a sanitary authority to provide a cemetery, and to render it compulsory on them to do so if the Local Government Board should require one to be provided.

The Legislature has not specified the cases in which it is incumbent upon the sanitary authority to give effect to the provisions of the new statute; but, seeing that it is incor-

porated with the Public Health Act, there can be no doubt that wherever, in the interests of the public health, it is necessary that a cemetery should be provided in any locality, the Legislature contemplated that the local authority would exercise the important powers now conferred upon them.

The following may be referred to as circumstances under which it will be incumbent upon the sanitary authority to take action:

1. Where in any burial ground which remains in use there is not proper space for burial, and no other suitable burial ground has been provided;
2. Where the continuance in use of any burial ground (notwithstanding there may be such space) is by reason of its situation in relation to the water supply of the locality, or by reason of any circumstances whatsoever, injurious to the public health;
3. Where, for the protection of the public health, it is expedient to discontinue burials in a particular town, village, or place, or within certain limits.

There are other circumstances which might render it necessary or expedient that a cemetery should be provided, such as inconvenience of access from the populous parts of the district to the existing burial ground, or the nature of the site, or the character of the subsoil; and instances may exist where, in deference to the wishes of the inhabitants, it may be expedient to provide, in accordance with the policy of the Burial Acts, a cemetery in which persons of different creeds may be buried with their own religious rites. On all or any of the foregoing grounds the authority of the Local Government Board may be invoked, and if the application should prove well founded, a compulsory order would necessarily follow.

The question, however, whether a cemetery should be provided for a particular locality will be one for the determination of the sanitary authority in the first instance; and it is only in the event of their default to establish a proper cemetery where one is required, or in consequence of a loan being needed to carry out the undertaking, or, if they should determine to construct a cemetery outside their district, of objection being taken to such a proceeding, that the Local Government Board have any authority to interfere.

The President has reason to believe that in numerous localities considerations of public health require that a cemetery should be provided, and with a view of enabling the authority to determine whether on sanitary grounds it is necessary, or desirable, that a cemetery should be provided for all or any part of their district the medical officers of health should be instructed to report upon the state of the several burial grounds within the area subject to their jurisdiction.

The statute enables a sanitary authority to acquire, construct, and maintain a cemetery either within or without their district. In the latter case, however, at least three months before the cemetery is commenced public notice must be given, and, in the event of any objection, the work cannot proceed without the sanction of the Local Government Board after local inquiry.

It will be seen, therefore, that a sanitary authority are empowered not only to establish a cemetery, but also to purchase an existing one; and it will be competent for the sanitary authority, in the event of their failure to acquire a suitable site by agreement, to apply for a provisional order enabling them to take lands for the purpose compulsorily.

Moreover, with the sanction of the central authority, they will be enabled to borrow money to pay for the purchase of the requisite land, for draining and inclosing the site, and for rendering it otherwise suitable for the object intended.

At the same time I am to point out that, if the sanitary authority should deem it expedient to provide a cemetery without resorting to a loan for the purpose, it is competent for them to do so, and to charge the cost upon the local rates.

In the case of an urban sanitary authority the rate liable for this cost will be the general district rate, or other rate applicable to the general purposes of the Public Health Act within the district. In the case of a rural sanitary authority the amount would come under the head of general expenses, and be defrayed out of the rate applicable to the payment of such expenses.

If, however, the cemetery were provided for a separate contributory place by which is meant a parish or special drainage district, or so much of a parish as is not within an urban

sanitary district or a special drainage district, it would be competent for the Local Government Board to order the amount to be special expenses, in which event the charge would be borne by the particular contributory place, but with this distinction in the incidence of the rate, that whereas in the case of general expenses the amount is either paid out of the poor rate or levied by a rate of an equal sum in the pound, in the case of special expenses the amount is raised by a separate rate to which lands are assessable at only one-fourth. It may be useful to add here that the rates referred to would in like manner be applicable to the maintenance of the cemetery after it is established, and also that a rural sanitary authority may depute to a parochial committee the exercise of their powers in connection with the management of any cemetery which may be required for any contributory place.

In addition to the powers conferred upon sanitary authorities of purchasing land for a cemetery the recent Act authorises them to accept a donation of land for the purpose, and also a donation of money or other property for enabling them to acquire, construct, or maintain a cemetery.

With regard to the regulation of the cemetery after it has been established, I am to state that the application to a cemetery of s. 141 of the Public Health Act, 1875, will enable the sanitary authority to make bye-laws with respect to the management and charges for the use of any cemetery established by them, and in this manner to provide for the orderly conduct of all persons within its limits, for the regulation of graves, and for the payment of reasonable fees for interments therein.

It should be borne in mind, however, that such bye-laws must be made in conformity with the Public Health Act, and be confirmed by the central authority; and the President contemplates that the Department should hereafter frame a series of model bye-laws to be recommended for adoption.

In order to make further provision for the due maintenance and management of a cemetery, the recent statute incorporates the Cemeteries Clauses Act, 1847 (10 & 11 Vict. c. 65).

That Act forms one of a series of statutes passed in 1847, the object being in each case to comprise in one general Act the provisions usually contained in Acts of Parliament relating

to matters of local improvement or administration. Several of these Acts, as well as other Consolidation Acts, were incorporated, either wholly or partly, with the Public Health Act, 1875, and the particular Act referred to has previously been incorporated with some general and several local Improvement Acts. Its provisions will now form part of the Public Health Act, 1875, and will apply, subject to the necessary qualifications, to all cemeteries acquired, constructed, or maintained by a sanitary authority under the new Act.

The President therefore thinks it right to direct the attention of the sanitary authority to the following obligations and powers imposed upon and exerciseable by them under the incorporated enactments.

With respect to the Making of the Cemetery.

The cemetery is not to be constructed nearer to any dwelling-house than two hundred yards, except with the consent of the owner and occupier.

The sanitary authority may build such chapels in the cemetery for the performance of burial services as they may think fit, and lay out and embellish the grounds of the cemetery.

The cemetery must be inclosed by substantial walls, or iron railings, of the height of eight feet at least.

The sanitary authority must keep the cemetery and the buildings and fences thereof in complete repair and in good order and condition.

With respect to Burials.

The sanitary authority may set apart a portion of the cemetery for burials according to the rites of the Established Church, and the bishop of the diocese may, on the application of the sanitary authority, consecrate the portion so set apart.

A chapel, to be approved by the bishop, must be built on the consecrated part for the performance of the burial service of the Established Church.

A salaried chaplain is to be appointed to officiate in the consecrated part of the cemetery, the appointment and salary to be subject to the approval of the bishop.

The sanitary authority may set apart the whole or a portion of the unconsecrated part of the cemetery as a place of burial for persons not being members of the Established Church, and may allow in any chapel built in such unconsecrated part a burial service to be performed according to the rites of any church or congregation other than the Established Church.

With respect to Exclusive Rights of Burial and Monumental Inscriptions.

The sanitary authority may set apart portions of the cemetery for the purpose of granting exclusive rights of burial therein, and may sell the exclusive right of burial in such portions, and the right of placing any monument or grave-stones in the cemetery, or any tablet or monumental inscription on the walls of any chapel or other building in the cemetery.

It should be observed that the Act under consideration does not extend to the metropolis, and it is scarcely necessary to point out that in other parts of the country where suitable cemeteries are in existence there can rarely be need for resorting to its provisions.

The President trusts, however, that in other localities the sanitary authorities will not hesitate to avail themselves of the important powers conferred by the Act, having regard to their serious obligations in the interest of the public health and to the responsibilities imposed upon them by the Legislature.

I am, Sir,

Your obedient Servant,

JOHN LAMBERT,

Secretary.

To the Clerk to
The Sanitary Authority.

PUBLIC HEALTH (INTERMENTS) ACT, 1897.

(42 & 43 Vict. c. 31.)

Local Government Board, Whitehall, S.W.,
16th February, 1881.

SIR,—I am directed by the Local Government Board to advert to their circular of the 19th August, 1879, and to forward here- Memorandum on the

sanitary requirements of cemeteries.

with, for the use of the sanitary authority, a series of model bye-laws with respect to cemeteries provided in pursuance of the Public Health (Interments) Act, 1879.

The Board also direct me to enclose a copy of a memorandum, which has been prepared under the supervision of their medical officer, and in which the sanitary requirements of cemeteries are discussed in detail.

This memorandum and the Board's former circular may be supplemented by a few observations upon one of the points to which the attention of the Board has been drawn during the preparation of the model bye-laws.

The combined effect of the enactments in s. 141 of the Public Health Act, 1875, and in s. 2 (1) of the Public Health (Interments) Act, 1879, is to enable a local authority to make bye-laws with respect to the management and charges for use of a cemetery provided under the latter Act. It is, however, to be observed that this power of making bye-laws is only one of several means which the local authority may employ for the proper control of their cemetery. For example, s. 37 of the Cemeteries Clauses Act, 1847, which is incorporated with the Act of 1879, enables the local authority to appoint grave-diggers and other servants necessary for the care and use of the cemetery. Where a grave-digger is appointed by the local authority, they may conveniently dispense with many regulations which might otherwise require to be embodied in bye-laws. It may be assumed that, as a servant of the local authority, the grave-digger will act in strict accordance with their directions as to such matters as the appointment of grave spaces, the dimensions of graves, and their separation by a sufficient thickness of undisturbed earth. These subjects may accordingly be regarded as outside the range of such bye-laws as will ordinarily be needed. At the same time it is important, for the reasons which are explained in the accompanying memorandum, that the local authority should give definite instructions to their servants as to the manner in which their duties are to be discharged.

Model bye laws.

The Board desire me to add that local authorities who may intend to adopt the model clauses as the basis of their bye-laws will, on application to the Board, be furnished with copies of those clauses, on foolscap paper, with a margin for anno-

tations. These draft forms should be used in accordance with the instructions in the circular of the 25th of July, 1877.

I am, Sir,

Your obedient Servant,

JOHN LAMBERT,

Secretary.

To the Clerk to the
(Urban or) Rural Sanitary Authority.

MODEL BYE-LAWS ISSUED BY THE LOCAL GOVERNMENT BOARD FOR THE USE OF SANITARY AUTHORITIES.

MEMORANDUM.

By s. 2 of the Public Health (Interments) Act, 1879 (42 & 43 Vict. c. 31), it is enacted that the provisions of the Public Health Act, 1875, as to a mortuary or place for the reception of the dead before interment shall extend to a cemetery or place for the interment of the dead.

The effect of this extension to a cemetery of the powers which, under s. 141 of the Public Health Act, 1875, may be exercised by a local authority in relation to a mortuary, is to enable the authority to make bye-laws with respect to the management and charges for use of the cemetery.

JOHN LAMBERT,

Secretary.

Local Government Board,
16th February, 1881.

BYE-LAWS WITH RESPECT TO THE MANAGEMENT OF A CEMETERY.

Interpretation of Terms.

1. In the construction of these bye-laws the following words have the meanings hereinafter respectively assigned to them, unless such meanings be repugnant to or inconsistent with the context or subject matter in which such words occur; that is to say,

"Grave" means a burial-place formed in the ground by excavation and without any internal wall of brickwork or stonework or any other artificial lining;

"Vault" includes underground burial-places of every description, except graves to which the word "grave" interpreted as aforesaid applies.

2. Every person who, in any part of the cemetery, causes a vault to be built for use as a burial place, shall cause the vault to be enclosed with walls constructed of good bricks, stone, or other hard and suitable material, properly bonded and solidly put together:

(*a*) With good mortar compounded of good lime and clean sharp sand or other suitable material; or

(*b*) With good cement; or

(*c*) With good cement mixed with clean sharp sand.

3. A person shall not, in any part of the cemetery, except as is hereinafter provided, cause or suffer more than one body to be buried at any one time in a grave in respect of which no exclusive right of burial has been granted by the sanitary authority:

Provided that this bye-law shall not be deemed to prohibit the burial at any one time in any such grave of two or more bodies of persons who were members of the same family.

4. In every case where, in any part of the cemetery, the body of a person whose age at the time of death did not exceed *twelve* years has been buried in a grave in respect of which no exclusive right of burial has been granted by the sanitary authority, a person shall not, at any time within a period of *eight* years after the date of the burial of the body, cause or suffer the grave to be opened for the purpose of burying therein the body of a person who was not a member of the family of which a person whose body has already been buried in the grave was a member.

5. In every case where, in any part of the cemetery, the body of a person whose age at the time of death exceeded *twelve* years has been buried in a grave in respect of which no exclusive right of burial has been granted by the sanitary authority, a person shall not, at any time within a period of *fourteen* years after the date of the burial of the body, cause or suffer the grave to be opened for the purpose of burying there-

in the body of a person who was not a member of the family of which a person whose body has already been buried in the grave was a member.

6. A person shall not, in any part of the cemetery, cause or suffer the body of a person whose age at the time of death did not exceed *twelve* years to be buried in a grave in such a manner as to require or allow any part of the coffin containing the body to be placed at a less depth than *three feet* below the level of the surface of the ground adjoining the grave.

7. A person shall not, in any part of the cemetery, cause or suffer the body of a person whose age at the time of death exceeded *twelve* years to be buried in a grave in such a manner as to require or allow any part of the coffin containing the body to be placed at a less depth than *four feet* below the level of the surface of the ground adjoining the grave.

8. A person shall not, in any part of the cemetery, cause a body to be buried in a grave otherwise than in such a manner as to provide by means of a sufficient layer or layers of earth, which shall throughout be closely rammed down and be not less than *one foot* in thickness, for the effectual separation of the coffin containing the body from any coffin already placed in the grave.

9. Every person who, in any part of the cemetery, buries a body in a vault shall, within a period of hours after the deposit in the vault of the coffin containing the body, cause the coffin to be wholly and permanently embedded in and covered with a layer or layers of good cement concrete, not less in any part than *inches* in thickness, or to be wholly and permanently enclosed in a separate cell or receptacle which shall be constructed of slate or stone flagging not less than *two inches* in thickness, properly jointed in cement, or of good brickwork in cement, and in such a manner as to prevent, as far as may be practicable, the escape of any noxious gas from the interior of the cell or receptacle.

10. Every person who, in any part of the cemetery, buries a body in a grave in respect of which an exclusive right of burial has been granted by the sanitary authority shall, as soon as conveniently may be after the lapse of such a period as may reasonably suffice for the natural subsidence of the earth with which the grave has been filled up, cause the surface of the

grave to be properly covered with fresh turf, or with any gravestone or monument which, in pursuance of any grant by the sanitary authority, may lawfully be erected or placed on the grave, or shall cause the surface of the grave to be planted with shrubs or with other suitable vegetation.

11. A person shall not, in any part of the cemetery, by any violent or indecent behaviour, prevent, interrupt, or delay the decent and solemn burial of any body.

12. Every person who offends against any of the foregoing bye-laws shall be liable for every such offence to a penalty of , and in the case of a continuing offence to a further penalty of for each day after written notice of the offence from the sanitary authority:

Provided, nevertheless, that the justices or court before whom any complaint may be made or any proceedings may be taken in respect of any such offence, may, if they think fit, adjudge the payment as a penalty of any sum less than the full amount of the penalty imposed by this bye-law.

LOCAL GOVERNMENT BOARD.

Memorandum on the Sanitary Requirements of Cemeteries.

(*Reprint*, 1893.)

By the Public Health (Interments) Act, 1879, the powers of sanitary authorities under the Public Health Act, 1875, are extended to include the acquisition, construction, and maintenance of a place for the interment of the dead, in the Act of 1879 called a cemetery.

In cases where the sanitary authority propose to defray the cost of establishing a cemetery by means of a loan, the sanction of the Local Government Board becomes necessary (Public Health Act, 1875, s. 233). Among the points considered by the Board in each particular case, before granting their sanction to a loan for the purpose of a cemetery, the question as to whether the proposed site is suitable or unobjectionable from a sanitary point of view finds a place.

The following memorandum has been drawn up in the Medical Department. It embodies the hygienic principles laid down by various English and foreign authorities as requisite to be observed in the establishment of a cemetery to prevent it from becoming a source of nuisance and danger to the living.

The dangers to the public health to which places of burial may give rise are of two kinds, viz., the contamination (1st) of *air* by the gaseous and volatile, and (2ndly) of *drinking water* by the liquid and soluble, products of decomposition.

1. *Contamination of Air.*—This may take place in several modes. The gases evolved from putrefying bodies may make their way to the surface through pores or fissures in the ground, or may pass into open graves dug in their neighbourhood. Or they may diffuse themselves laterally through the ground air and be drawn up into the interior of houses. Or noxious emanations may be given off from putrid drainage water, whether baled out of graves and thrown upon the surface, or draining into open channels or watercourses. This nuisance and danger to health may be occasioned, not only to grave-diggers and persons attending funerals, but also to the inhabitants of houses in the immediate neighbourhood of the burial ground. To obviate these risks it is necessary that the number of decomposing bodies in a given portion of ground should not at any time be so great that the gaseous products cannot be oxidised into harmless substances in the interstices of the soil, or taken up by vegetation; that a sufficient depth of earth intervene between corpses and the surface; and that the soil be of a suitable nature and properly drained, the drainage water being innocuously disposed of. Furthermore, since the atmospheric contamination which has to be especially guarded against is that of the air in the interior and neighbourhood of human habitations and frequented places, it is necessary that the place of burial should be in an open situation and at a sufficient distance from dwellings, in order that any effluvia arising from it may be diluted by diffusion, or dispersed by the winds, so as not to find their way in an injurious state of concentration to places where they will be liable to be inhaled.

2. *Pollution of Water.*—Foul liquids from graves may enter and pollute a stream, or wells in the vicinity of a graveyard

may be injured by percolation from it, and in either case, if the water be used for drinking, injury to health may be occasioned. The liability of wells to pollution obviously depends partly upon their proximity to the graveyard, and partly upon the configuration and geological structure of the ground. It is necessary, therefore, in order to obviate risk from this cause, that a cemetery should have a suitable soil and be properly drained, and that it should be at a sufficient distance from subterranean sources of water supply, and in such a position with respect to them that the percolation of foul matters from one to the other may be impossible.

The sanitary requirements for a cemetery indicated under the foregoing remarks may be summed up under four headings :—

I. Suitable soil, and proper elevation of site.

II. A suitable position, especially with respect to houses and sources of water supply.

III. Sufficient space.

IV. Proper regulation and management.

I. The soil of a cemetery should be of an open porous nature, with numerous close interstices, through which air and moisture may pass in a finely divided state freely in every direction. In such a soil decay proceeds rapidly, and the products of decomposition are absorbed or oxidised. The soil should be easily worked, yet not so loose as to render the work of excavation dangerous through the liability to falls of earth. It should be free from water or hard rock to a depth of at least 8 feet. If not naturally free from water, it should be drained in the best manner practicable to a depth below that to which it is intended that graves shall be dug, and it is therefore necessary that the site should be sufficiently elevated above the drainage level of the locality, either naturally, or, where necessary, by filling it up to the required level with suitable earth.

Loam, and sand, with a sufficient quantity of vegetable mould, are the best soils ; clay and loose stones the worst. A dense clay is laborious to work and difficult to drain ; by excluding moisture and air it retards decay, and it retains, in a concentrated state, the products of decomposition, sometimes

to be discharged into graves opened in the vicinity, or sometimes to escape through cracks in the ground to the surface. A loose stony soil, on the other hand, allows the passage of effluvia. Before fixing on a site the nature of the soil should be ascertained by sinking trial holes to a depth of at least eight feet in several parts of the ground.

II. The situation of a cemetery requires consideration from several points of view, of which the most important is its position with reference to dwelling-houses and to sources of domestic water supply. While public convenience requires that the cemetery shall not be too far distant from the population for which it is intended, a due regard to public health requires that it shall not be dangerously near. The most suitable distance will vary in different cases; it will be greater in the case of a large than of a small cemetery; greater also in the case of a large and rapidly extending town than in that of a small and stationary village.

With regard to the minimum distance which should intervene between burial places and human habitations, the Burial Act of 1855 prescribes that no ground not already used as a cemetery shall be used for burials under that Act, within a distance of 100 yards from any dwelling-house, without the consent of the owner, lessee, and occupier of such dwelling-house. The effect of the incorporation of section 10 of the Cemeteries Clauses Act, 1847, with the Public Health (Interments) Act, 1879, is that no part of a cemetery provided under the latter Act is to be constructed nearer to any dwelling-house than 200 yards, except with the consent in writing of the owner, lessee, and occupier. In France the prescribed minimum distance of a cemetery from the nearest habitation is 100 metres (109 yards), and it is not lawful without special permission to build any house or dig any well within that distance of an existing cemetery.

It may be taken that a distance of 200 yards is amply sufficient to prevent any injury arising to health from a well-kept cemetery, so far as regards noxious matters transmitted through the air. It is, however, by no means certain that cemeteries established under the Public Health (Interments) Act will in all cases and at all times be distant so much as 200 yards from the nearest human habitation. With the con-

sent of the owners, lessees, and occupiers of existing houses, a cemetery may be established within the prescribed limit; and it is competent to any one afterwards to erect a new house as near to a cemetery as he pleases. It does not, however, appear that the amount of danger to health to be feared from proximity to a well-kept cemetery is large. Since intramural interment has been abolished, recorded cases of injury to health, or even of nuisance arising from graveyard emanations, whether conveyed by air or water, are extremely rare (*a*). There is, therefore, no reason why a cemetery should necessarily be a nuisance, or become a source of danger to the health of those living near it. Nevertheless, in view of the evils which in former times have undoubtedly arisen from the practice of intramural sepulture, and also because the erection of houses near a cemetery interferes with the free play of air around and over it, it is desirable that the site of the cemetery should be in a neighbourhood in which building is not likely to take place, and also that a belt of ground should be reserved between the graves and the nearest land on which a house may be built in order to obviate to some extent the risk of contamination of ground air and subsoil water with decomposing matters. This is especially necessary where houses are constructed with cellars. It is, therefore, highly desirable that interments should not be made up to the extreme edge of the cemetery; and it would be possible without great waste of space to reserve in all cases a strip of ground free from interments, 15 to 30 feet in width, around the whole cemetery on the inner side of the boundary fence. This strip would afford room, on the inside, for a gravel or asphalte walk to give access to all parts of the cemetery, and on the outside next the fence to a belt of shrubs or trees, the rootlets of which penetrating the soil would arrest and assimilate any decomposing matters percolating outwards from the cemetery. Obviously a cemetery should not be placed on ground elevated above neighbouring houses, where the soakings from it may percolate to the sites and foundations of the dwellings below.

(*a*) Dr. C. A. Cameron (Manual of Hygiene, p. 253) shows that the amount of organic matter deposited yearly in a well-kept cemetery is less than the amount removed from its surface in the form of vegetation, and considerably less than that spread as manure over a cultivated field.

If there be a mortuary or chapel attached to or within the precincts of the cemetery, care should be taken to see that both are efficiently ventilated by permanent openings of adequate size, near or below the floor-line for inlet, and in the ceiling for outlet of air. The chapel should be fitted with an iron trellis-work gate in the porch, so that the wooden door may be kept open in fine weather.

Relations of Cemetery to Sources of Water Supply.—It is evident that the drainage of a cemetery should not be allowed to enter a stream from which water is drawn for domestic purposes.

The degree to which the purity of neighbouring wells is endangered by a cemetery, and the distance to which contamination may extend, obviously depend in each particular case upon the relative elevation of the respective sites of cemetery and well, and upon the nature and dip of the intervening strata, so that it would seem impossible to lay down a standard of distance applicable to all cases. Fissured rock might allow foul matters to traverse considerable distances, while the interposition of a bed of clay or a water-tight fault would shut them off, or the passage through an aërated stratum of finely divided earth would oxidise and destroy them on their way. A dangerous state of things is when graves and wells are sunk near together in a shallow superficial water-bearing stratum of loosely porous nature resting on impervious clay.

It does not appear, however, that the risk to which wells are exposed from the proximity of a properly managed cemetery is in ordinary cases great. A leaky cesspool is a far greater source of danger than a grave. The solid and liquid excretions voided by a human being in the course of a single year amount to several times the weight of his body.

The precautions to be taken to avoid pollution of wells and springs in the neighbourhood of a cemetery will depend much upon local circumstances; they may be said to be, 1st, the intervention of a sufficient space between the cemetery and the water source; 2ndly, proper drainage, so that the subsoil water of the cemetery shall be conveyed away; and 3rdly, proper management of the cemetery so that the amount of

organic matter in one place shall not be more than the soil can dispose of. The English Acts and regulations prescribe no limit of distance from water supplies within which a cemetery is not to be established, but it is to be taken for granted that a site would not be sanctioned if it appeared likely that the purity of existing water supplies would be endangered. Nevertheless, as in the case of the erection of new houses, there is no power to prevent any one from sinking a well on his own property, as near to a cemetery as he pleases. [Of course, should the well become polluted, it can be dealt with under the provisions of the Public Health Act.] The reservation, free from interments, of a strip of land next the boundary, as before recommended, would be of service in this relation also.

The site of a cemetery should be open, so that the wind may blow freely over it: not shut in by hills or close belts of high trees.

Trees, though useful, should not be allowed to become an impediment to the air. For the same reason, as a fence open railings are preferable to high walls.

Sites are of course unsuitable which are liable to be flooded, or to landslips, or which are in danger of being washed away or encroached upon by streams or the sea. In places where mining operations are carried on, the question of risk of subsidence will have to be considered. Very steep sites are not desirable. The cemetery should be accessible by good roads from all parts of the district.

III. *Sufficiency of Space.*—On sanitary grounds it is requisite that each corpse shall be surrounded and covered by a mass of earth sufficient to deodorise and destroy the putrid emanations proceeding from it, and also that the total amount of space shall be so great that it may not be necessary to reopen any grave until the soft parts of the body previously interred therein are completely decomposed. On administrative grounds it is requisite that in cases where the land is acquired by means of a loan, the accommodation provided shall be sufficient to last for the term of years over which the repayment of the loan is spread. On sentimental grounds it is desirable that sufficient space should be reserved that members of the same family may be interred near together. The

latter consideration alone is usually sufficiently powerful to render local authorities desirous of providing more than the minimum amount of space.

The length of time necessary to effect complete decomposition of the soft parts of a human body varies (the material of coffins being similar) (*a*) according to the nature of the soil, being shorter in a porous well-aërated soil, than in one which is either dense and clayey, waterlogged, or surcharged with animal matter. The regulations of the Home Office prescribe that no unwalled grave shall be reopened within 14 years after the burial of a person above 12 years of age, or within eight years after the burial of a child under 12 years of age, unless to bury another member of the same family, in which case a layer of earth, not less than 1 foot thick, shall be left undisturbed above the previously buried coffin; but if on reopening any grave the soil be found to be offensive, such soil shall not be disturbed, and in no case shall human remains be removed from the grave.

The size of grave spaces (*i.e.*, of the plots of ground, each to contain one grave, into which the cemetery is to be divided) prescribed by the Home Office is for adults 9 feet long by 4 feet broad = 4 square yards, and for children under 12, 2 square yards, viz., either 4½ feet by 4 feet, or 6 feet by 3 feet. These sizes, which are conveniently commensurate with one another, may be recommended to sanitary authorities for general adoption. They allow—on the assumption that the size of the grave (*i.e.*, the hole dug for the reception of the body) of an adult is 7 feet by 2 feet—the retention of a strip of undisturbed ground about 2 feet in width between every two adjacent graves. In any case it is important that each grave should be at least a foot distant from the nearest grave

(*a*) Burial in the earth in coffins of a perishable nature is to be preferred, on sanitary as well as on economic grounds, to the use of graves and coffins of durable and impervious materials. In the former case the resolution of the constituents of the body into innocuous inorganic substances proceeds rapidly and uninterruptedly through the action of nitrifying organisms contained in the soil. In the latter case the poisonous products of a partial and arrested decomposition are sealed up; it may be to become a source of danger to succeeding generations. But as it is doubtful whether public sentiment is yet ripe for the prohibition of vault burial, provisions for its regulation have been inserted in the model bye-laws as to cemeteries, with a view to reducing the dangers of this mode of burial to a minimum.

on every side, not only to prevent the passage of effluvia into the open grave from decomposing bodies in the adjoining graves, but also to avoid the danger of falls of earth, which may happen if excavations are made too near to ground which has been previously disturbed.

The amount of space required for each 1,000 population will vary to some extent with the death-rate; but where the mortality is high, a large proportion of the deaths will usually be those of persons under 12. More space will be required for an increasing than for a stationary population. Taking average numbers in a stationary population of 1,000 there will be, say, 19 deaths per annum, of which about 7 will be of persons under 12 years old, and 12 of persons above that age. For the interment of the persons above 12, $12 \times 4 = 48$ square yards of ground will be required yearly, and as these grave spaces will not be again available, if the above-quoted rule be observed, until after the lapse of 14 years, at least 672 square yards must be provided for them. Similarly for children under 12, $7 \times 2 \times 8 = 112$ square yards at least will be required; making a total of 784 square yards. The necessary paths and buildings usually occupy at least a sixth of the surface. We thus get a minimum allowance of 915 square yards, or, say, a quarter of an acre (1,210 square yards) per 1,000 inhabitants, which is the usually estimated minimum for 14 years. The desirability, however, of providing more than a bare minimum of space is obvious, and is generally recognised.

If the suggestion previously made in this memorandum be adopted, to leave a strip free from graves 15 or more feet in width, around the interior of the cemetery wall, a somewhat larger amount of land will be required. The proportion will vary with the size and shape of the plot of land to be used as a cemetery. Thus a strip 15 feet wide around an acre of land, if the plot be square (*i.e.*, 69½ yards in the sides), will take up 1,290 square yards, or rather more than a fourth; if the plot be rectangular, 55×88 yards, a belt 15 feet wide will require 1,330 yards. This belt may, however, be utilised for paths and shrubberies.

The length of time for which cemetery provision on the above scale will remain available will depend upon the nature of the soil, the depth of graves, the mode of interment, and other

circumstances. In an open soil, if an adult body (*a*) be buried in an ordinary wooden coffin, at the end of 14 years the coffin and the softer parts of the corpse may be found completely decayed, only the larger bones remaining, and the coffin collapsed so as to occupy a vertical space only a few inches in thickness. The grave may then be reopened nearly to its original depth, without disturbing the remains of the body previously interred. Thus, if the grave be made originally, say, 8 feet in depth, a number of burials may be made in it before it becomes so full of bones as to be unfit for further use. In a dense clay soil, on the other hand, such coffins are found intact after having been buried 30 years or more. As the depth of a coffin is about 15 inches there would not in a grave 8 feet deep in such a soil be room for more than two interments, if the rules to leave a foot of earth between any two coffins in the same grave and not to bury within 4 feet of the surface be observed; for after two interments and two intervals of 14 years the grave would be filled to 4 feet 6 inches from the surface by the two coffins still undecomposed and the intervening layer of earth.

If graves can be made deeper, so as to hold more coffins, the cemetery will of course take longer to fill, for on the above assumptions each addition of 2¼ feet to the original depth of adult graves will represent a further period of 14 years during which the ground will remain available. In wealthy districts, in which many family graves are likely to be purchased, the cemetery will not, other things being equal, be available so long as in a poor district, in which most of the burials are in common graves; much of the ground in the first case being appropriated though not filled. Bodies buried in walled graves occupy the ground permanently, and do not by their decay make room for others.

It is necessary, both for the carrying out of a proper system as regards the reopening of graves, and also to enable the place of burial of any particular person to be identified, if desired, that so much of the cemetery as is to be used for interments should be divided into numbered grave spaces, and that a register of graves should be kept, in which the name, age, and

(*a*) The bodies of children under like circumstances decay more rapidly than those of adults.

date of burial of the person or persons interred in each shall be duly recorded. The grave spaces should be distinguished by appropriate marks (which may conveniently consist of a number at the ends of each longitudinal row of graves, and a letter at the ends of each transverse row, or *vice versâ*), and their position should be marked on a plan. This is obligatory under s. 41 of the Cemeteries Clauses Act, 1847, for burial places in which an exclusive right of burial has been granted, and it is desirable, for the reasons above given, that all grave spaces should be similarly distinguished.

IV. Bye-laws may be made by local authorities for the management of cemeteries provided by them under the Public Health (Interments) Act. The model bye-laws issued by the Local Government Board are appended below (Appendix I.).

The regulations issued by the Secretary of State for the Home Department for burial grounds provided under the Burial Acts are also appended to this Memorandum (Appendix II.).

August, 1888.

APPENDIX I.

Bye-laws with respect to the Management of a Cemetery.

These are set out *ante*, p. 813.

APPENDIX II.

Regulations for Burial Grounds provided under the Burial Acts.

Issued by the Secretary of State for the Home Department.

These are set out *ante*, p. 799.

BURIAL BOARDS.

RETURN to an Order of the Honourable The House of Commons, dated 23rd May 1894 :—*for,*

COPY "of MEMORANDUM prepared by the LOCAL GOVERNMENT BOARD as to the Effect of 'THE LOCAL GOVERNMENT ACT, 1894,' as regards BURIAL BOARDS."

HUGH OWEN,
Secretary.

Local Government Board,
28th May 1894.

MEMORANDUM as to the Effect of the LOCAL GOVERNMENT ACT, 1894, as regards BURIAL BOARDS.

IF, after the election of parish councils, the Burial Acts, 1852 to 1885, are adopted for the whole or part of any parish which has a parish council, no burial board will be elected, but the parish council will be the authority for the execution of these Acts.

Consequently, after the Local Government Act, 1894, comes into operation, a burial board cannot be newly established in any rural parish having a parish council.

In cases in which the area of jurisdiction of an existing burial board is co-extensive with a rural parish, all the powers, duties, and liabilities of the burial board will be transferred to the parish council on the latter coming into office. The burial board will cease to exist, and their place will be taken by the parish council without any adoption of the Burial Acts by the parish meeting.

Where the area under a burial board is part only of a rural parish the burial board, or the parish meeting for that part, may transfer the powers, duties and liabilities of the burial board to the parish council, subject to any conditions as to the execution thereof by a committee as the burial board or parish meeting may impose.

Where the area is in two or more rural parishes, the powers of the burial board will be transferred by the Act of 1894 to the respective parish councils for such parishes; and where the area is partly in a rural parish and partly in an urban district, these powers will be transferred to the parish council and the district council of the urban district. Until other provision is made, the powers so transferred are to be exercised by a joint committee. Where there is no parish council, the parish meeting is to be substituted in the cases last mentioned.

Subject to this, a parish meeting in a rural parish which has no parish council will have none of the powers of a burial board under the Burial Acts, unless the county council, on the application of the parish meeting, confer on them the powers given by the Act of 1894 to a parish council in this matter; but burial boards may still be newly established for the same areas as heretofore in rural parishes having no parish council if there is no existing burial board for such area, and if the Burial Acts are adopted by the parish meeting for it.

Any such burial board will have the usual power to provide a cemetery.

Existing burial boards in rural parishes, except where they are superseded as above stated, will continue to exist, without any adoption of the Burial Acts by the parish meeting.

Where a burial board district is wholly in an urban district the council of the district may resolve that the powers, duties, and liabilities of the burial board shall be transferred to the council from a specified date, and such transfer will take effect from that date and the burial board will cease to exist. Subject to this, the burial board for such a district will not be affected by the Act.

The powers possessed by rural sanitary authorities of providing cemeteries under the Public Health (Interments) Act, 1879, will be transferred to rural district councils.

Local Government Board,
April, 1894.

LOCAL GOVERNMENT ACT, 1894.

PROCEEDINGS UNDER SECTIONS 9 AND 10.

Local Government Board, Whitehall, S.W.,
23rd May, 1895.

SIR,

I AM directed by the Local Government Board to state that they have issued orders prescribing regulations and certain adaptations of Statutory provisions under sections 9 and 10 of the Local Government Act, 1894. Orders Nos. 32,844 32,838, 32,841. Memoranda Nos. 1 and 2.

Order No. 32,844 relates to cases in which the county council proceed under section 9, upon a representation by a parish council under sub-section (2) of that section, or upon the petition, under section 2 of the Allotments Act, 1890, of persons qualified as mentioned in that section, or of a parish council, or upon the petition, under section 3 (2) of the Allotments Act, 1887, of a district council.

A brief summary of the contents of the order is given in the Memorandum (No. 1), of which a copy is herewith forwarded.

Order No. 32,838 relates to proceedings upon representations of parish councils, under sub-section (1) of section 10, with a view to orders for the compulsory hiring of land for allotments.

A Memorandum (No. 2) descriptive of the effect of this order is also enclosed.

Order No. 32,841, in pursuance of sub-section (8) of section 10, prescribes adaptations of the provisions of the Lands Clauses Acts which may be applied by orders of the county council for the compulsory hiring of land for allotments.

Six copies of each of the orders are enclosed.

I am, Sir,

Your obedient Servant,

ALFRED D. ADRIAN,

Assistant Secretary.

To the Clerk of the County Council.

Local Government Board, Whitehall, S.W.,
23rd May, 1895.

SIR,

I AM directed by the Local Government Board to state that they have issued two orders prescribing regulations and adaptations of certain provisions of the Allotments Acts, 1887 and 1890, applicable to proceedings under sections 9 and 10 of the Local Government Act, 1894.

Order No. 32,844. Two copies.

Two copies of each order are enclosed.

Order No. 32,838. Two Copies.

The Board, at the same time, enclose a copy of each of the Memoranda which they have caused to be prepared explanatory of points arising out of the orders.

Memoranda Nos. 1 and 2.

The Board have also issued a further order prescribing adaptations of the Lands Clauses Acts for the purposes of orders made by county councils under section 10 of the Act. Copies of this order may be obtained on application to the Board.

I am, Sir,
Your obedient Servant,
ALFRED D. ADRIAN,
Assistant Secretary.

To the Clerk of the Parish Council.

MEMORANDUM.

The provisions of this order relate to cases of two kinds, viz.: (1) Representations by parish councils under s. 9 (2) of the Local Government Act, 1894; and (2) certain proceedings under the Allotments Acts, 1887 and 1890.

As to cases of the first description, it may be pointed out that if a parish council are unable to purchase by agreement and on reasonable terms suitable land for any purpose (other than allotments) for which they are authorised to purchase land (as, for example, for a purpose within the scope of the powers of the parish council under s. 8 of the Local Government Act, 1894), they may represent the case to the county council. If, on any such representation, the county council are satisfied that suitable land for the purpose of the parish council cannot be acquired on reasonable terms by voluntary agreement, and that the circumstances are such as to justify

the county council in proceeding under s. 9 of the Local Government Act, 1894, the county council are then to cause such public inquiry to be made in the parish, and such notice to be given both in the parish and to the owners, lessees, and occupiers of the land proposed to be taken as may be prescribed by the Local Government Board.

In Articles I. and II. of the order, the Local Government Board have prescribed regulations as to the preliminary notices and as to the public inquiry.

Article III., in pursuance of sub-s. 6 of s. 9, prescribes the mode of service of orders made by county councils under the section.

Article IV. relates to the same matter, and also to the mode of serving copies of the notices referred to in Articles I. and II.

Article V. prescribes the period within which a memorial by some person interested, praying that an order made under s. 9 shall not become law without further inquiry, may be presented to the Board.

Article VI. prescribes adaptations of the provisions of sub-ss. (5), (6), (7), and (8) of s. 3, and of s. 11 of the Allotments Act, 1887, and of s. 3 of the Allotments Act, 1890.

(2) As regards proceedings under the Allotments Acts, 1887 and 1890, it may be observed that the provisions of the order relate to proceedings taken on (i) the petition under s. 2 of the Allotments Act, 1890, of persons qualified as mentioned in that section; (ii) on the petition of the parish council; and (iii) on the petition of the district council.

(3) As to cases (i) and (ii), the following explanation will show the various steps which are necessary to bring matters to a point at which the county council may elect to take action under s. 9 of the Local Government Act, 1894:—

Under s. 2 of the Allotments Act, 1887, on a representation in writing to the district council of any urban or rural district by any six parliamentary electors or ratepayers resident in the case of an urban district, in that district, and in the case of a rural district, in some parish in that district, that the circumstances of the urban district or parish are such that it is the duty of the district council to take proceedings therein under that Act, the district council are to take such representation into consideration.

Where such a representation has been made, and any six persons qualified to make the representation consider that the circumstances of the district or parish are such as to make it the duty of the district council to take proceedings therein under the Allotments Act, 1887, and that the district council (not being the town council of a borough) have failed to acquire land adequate and suitable in quality and position to provide a sufficient number of allotments, these persons, under s. 2 (1) of the Allotments Act, 1890, may petition the county council, stating the facts and requesting the county council to put into force the Act of 1887, for the purpose of providing a sufficient number of allotments for the district or parish.

Where a parish in a rural district has a parish council, that council may exercise the power of the six parliamentary electors in the matter of the preliminary representation; but the power thus conferred upon the parish council is additional to and not in substitution for that of the electors; and in the case of such a parish the further power of petitioning the county council is exerciseable by the parish council as well as by the electors.

In an urban district, however, the representation and the petition can only come from the six registered parliamentary electors or ratepayers resident in the district.

But the representation to the district council is a condition precedent to the exercise of the power of petitioning, and the statement of facts which the petitioners are to make should include a reference to the prior representation as indicating a basis for the action of the petitioners.

For the proper investigation of matters arising upon such petitions, the Allotments Act, 1890, provides for the appointment by the county council of a standing committee. Annually, at the meeting for the election of chairman, the county council are to appoint under the Local Government Act, 1888, a standing committee not exceeding one-fourth of the whole council. For business relating to any district or parish wholly or partly situate in an electoral division, the county councillor representing that division is, if not already appointed, to be an additional member of the committee. The petition is, as of course, and without any order of the council, to be referred to the standing committee. The

committee, on being satisfied of the *bona fides* of the application, are forthwith to cause a local inquiry into the circumstances to be made, and to report the result to the council.

When this report has been received, it will rest with the county council to decide whether they will proceed further under the Allotments Act, 1890, or whether they will have recourse to the new procedure authorised by s. 9 of the Local Government Act, 1894.

It may be added that (1) in a rural parish having a parish council, procedure with a view to an order under s. 9 of the Local Government Act, 1894, on the petition of parliamentary electors, or ratepayers, or of the parish council will not be available unless it can be shown that there has been failure on the part of the district council to exercise their powers, and that land cannot be acquired on reasonable terms by voluntary agreement; and that (2) in the case of a rural parish not having a parish council, the procedure will not be applicable unless the parish meeting has under s. 19 of that Act been invested with the powers in this particular of the parish council. For without a parish council or a meeting invested with its powers there will be nobody to whom the land acquired by the county council can be assured under sub-s. 14 of s. 9 of the Local Government Act, 1894.

In relation to procedure under s. 9, Article I. prescribes the notice to be given in the parish or in the district (if it be urban), and to the owners, lessees, and occupiers of the land proposed to be taken; Article II. prescribes the notice of the public inquiry; Article III. prescribes the mode of serving copies of orders made by county councils; Article IV. relates to the same subject, and also to the service of copies of the notices prescribed by Articles I. and II.; Article V. prescribes the period within which a memorial by a person interested, praying that an order shall not become law without further inquiry, may be presented to the Local Government Board; and Article VI. prescribes adaptations of sub-s. (2) of s. 2, sub-ss. (5), (6), (7), and (8) of s. 3, and of s. 11 of the Allotments Act, 1887, and s. 3 of the Allotments Act, 1890.

(4) With respect to case (iii), in which proceedings under the Allotments Acts, 1887 and 1890, are taken on the petition of the district council, it may be said that the occasion for

resorting to the procedure which s. 9 of the Local Government Act, 1894, authorises, may arise at a stage in proceedings under the Allotments Act, 1887, at which the district council are met by the difficulty that suitable land sufficient for allotments for their district or any parish in their district cannot be acquired by them by hiring or purchase by agreement at a reasonable price or rent, and subject to reasonable conditions.

At this stage the district council, under s. 3 (2) of the Allotments Act, 1887, may petition the county council. On the receipt of such a petition it will be referred for investigation and report to the standing committee appointed by the county council under s. 3 of the Allotments Act, 1890.

Assuming that on the report of the standing committee the county council consider that the case is one in which they should proceed under s. 9 of the Local Government Act, 1894, it will be incumbent upon them in taking the various steps indicated in that enactment to observe the requirements of Articles I.—IV. of the order. Articles V. and VI. also apply to cases in which district councils are concerned.

Local Government Board,
May, 1895.

GENERAL ORDER. LOCAL GOVERNMENT ACT, 1894.

COMPULSORY PURCHASE OF LAND: REGULATIONS AND ADAPTATIONS UNDER SECTION 9.

PARISH COUNCILS AND DISTRICT COUNCILS.

To the County Council of every ADMINISTRATIVE COUNTY in ENGLAND and WALES, except the Administrative County of London;

To the Urban District Council of each Urban District in England and Wales which is not a County Borough;

To the Rural District Council of each Rural District in England and Wales;

To each Parish Council in England and Wales;

And to all others whom it may concern.

WHEREAS by Section 9 of the Local Government Act, 1894, it is enacted that—

"9.—(1.) For the purpose of the acquisition of land by a parish council the Lands Clauses Acts shall be incorporated with this Act, except the provisions of those Acts with respect to the purchase and taking of land otherwise than by agreement, and section one hundred and seventy-eight of the Public Health Act, 1875, shall apply as if the parish council were referred to therein.

"(2.) If a parish council are unable to acquire by agreement and on reasonable terms suitable land for any purpose for which they are authorised to acquire it, they may represent the case to the county council, and the county council shall inquire into the representation.

"(3.) If on any such representation, or on any proceeding under the Allotments Acts, 1887 and 1890, a county council are satisfied that suitable land for the said purpose of the parish council or for the purpose of allotments (as the case may be) cannot be acquired on reasonable terms by voluntary agreement, and that the circumstances are such as to justify the county council in proceeding under this section, they shall cause such public inquiry to be made in the parish, and such notice to be given both in the parish and to the owners, lessees, and occupiers of the land proposed to be taken as may be prescribed, and all persons interested shall be permitted to attend at the inquiry, and to support or oppose the taking of the land.

"(4.) After the completion of the inquiry, and considering all objections made by any persons interested, the county council may make an order for putting in force, as respects the said land or any part thereof, the provisions of the Lands Clauses Acts with respect to the purchase and taking of land otherwise than by agreement.

"(5.) If the county council refuse to make any such order, the parish council, or, if the proceeding is taken on the petition of the district council, then the district council, may petition the Local Government Board, and that Board after local inquiry may, if they think proper, make the order, and this section shall apply as if the order

had been made by the county council. Any order made under this sub-section overruling the decision of the county council shall be laid before Parliament by the Local Government Board.

"(6.) A copy of any order made under this section shall be served in the prescribed manner, together with a statement that the order will become final and have the effect of an Act of Parliament, unless within the prescribed period a memorial by some person interested is presented to the Local Government Board praying that the order shall not become law without further inquiry.

"(7.) The order shall be deposited with the Local Government Board, who shall inquire whether the provisions of this section and the prescribed regulations have been in all respects complied with; and if the Board are satisfied that this has been done, then after the prescribed period:

"(*a.*) If no memorial has been presented, or if every such memorial has been withdrawn, the Board shall, without further inquiry, confirm the order:

* * * * * *

"(10.) Any order made under this section for the purpose of the purchase of land otherwise than by agreement shall incorporate the Lands Clauses Acts and sections seventy-seven to eighty-five of the Railways Clauses Consolidation Act, 1845, with the necessary adaptations, but any question of disputed compensation shall be dealt with in the manner provided by section three of the Allotments Act, 1887, and provisoes (*a*), (*b*), and (*c*) of sub-section (4) of that section are incorporated with this section and shall apply accordingly: Provided that in determining the amount of disputed compensation, the arbitrator shall not make any additional allowance in respect of the purchase being compulsory.

* * * * * *

"(13.) Sub-section (2) of section two, if the land is taken for allotments, and, whether it is or is not so taken, sub-sections (5), (6), (7), and (8) of section three of the Allotments Act, 1887, and section eleven of that Act, and section three of the Allotments Act, 1890, are incorporated

with this section, and shall, with the prescribed adaptations, apply accordingly."

* * * * * *

And whereas by section 75 of the said Act it is enacted that, in that Act, unless the context otherwise requires, the expression "prescribed" means prescribed by order of the Local Government Board:

NOW THEREFORE, We, the Local Government Board, in pursuance of the powers given to us in that behalf, do, by this our order, and until we shall otherwise direct, prescribe as follows; that is to say,—

ARTICLE I.—In every case in which a county council on a representation by a parish council under sub-section (2) of section nine of the Local Government Act, 1894, or on any proceeding under the Allotments Acts, 1887 and 1890, propose to proceed under section nine of the Local Government Act, 1894, and, with a view to such proceeding, to cause public inquiry to be made, the county council shall, not less than six weeks before the day on which it is proposed that the inquiry shall be held, cause notice to be given in such form and in such manner as are hereinafter prescribed:—

I.—The notice shall specify the particulars of the representation or of the proceeding under the Allotments Acts, 1887 and 1890, and shall state that the county council propose to cause public inquiry to be made.

II.—The notice shall further specify as regards any land proposed to be taken, the quantity and description, and the situation of the land proposed to be taken, the names of the owners, lessees, and occupiers of the said land, and the purpose for which the said land is proposed to be taken.

III.—A printed copy of the notice shall be sent by post by the county council to each owner, lessee, and occupier of the land proposed to be taken, or, if such owner lessee, or occupier is absent abroad, to his agent.

ARTICLE II.—The county council, not more than one calendar month, and not less than two weeks before the holding of the public inquiry, shall cause a notice to the like effect as that of the notice prescribed by Article I., and containing also a statement of the day, time, and place appointed

for the holding of the inquiry, and of the person or persons by whom the inquiry is to be held, to be published and given in accordance with the following requirements; that is to say,—

I.—The notice shall be published in the parish or, in the case of any proceeding under the Allotments Acts, 1887 and 1890, relating to an urban district, in the district by posting a printed copy of the notice as a bill or placard in every such place in the parish or district as is ordinarily used for posting public or parochial notices.

II.—A printed copy of the notice shall be sent by post by the county council:—

(a.) Where the county council propose to proceed on a representation of the parish council under sub-section (2) of section nine of the Local Government Act, 1894,—
to the parish council: and

(b.) In the case of any proceeding under the Allotments Acts, 1887 and 1890:

i. Where the proceeding is taken on a petition under section two of the Allotments Act, 1890, by persons qualified as mentioned in that section,—
to each of the petitioners.

ii. Where the proceeding is taken on the petition of the parish council,—
to the parish council.

iii. Where the proceeding is taken on the petition of the district council,—
to the district council: and

(c.) In every case to each owner, lessee, and occupier of the land proposed to be taken, or, if such owner, lessee, or occupier is absent abroad, to his agent.

ARTICLE III.—1. The county council shall, within ten days after the making of the order, cause a copy of any order made by them under section nine of the Local Government Act, 1894, to be served by post in accordance with the following requirements; that is to say,—

i. Where the order relates to land proposed to be taken by the parish council for any purpose to which sub-section (2) of the said section applies:

A copy of the said order shall be sent by post to the parish council.

2. Where the order relates to land proposed to be taken for the purpose of allotments:—

i. If the proceeding is taken upon the petition under section two of the Allotments Act, 1890, of persons qualified as mentioned in that section or upon the petition of the parish council,—

to the parish council.

ii. If the proceeding is taken upon the petition of the district council,—

to the district council.

3. In every case a copy of the said order shall be sent by post to each owner, lessee, or occupier of the land proposed to be taken, or, if such owner, lessee, or occupier is absent abroad, to his agent.

ARTICLE IV.—Every copy of a notice or order which in pursuance of any provision in Articles I., II., and III. is required to be sent or served by post to or upon any council or person therein mentioned shall be so sent or served by a registered letter containing such copy, and properly addressed, prepaid, and posted to such council or to such person at his usual or last known place of abode.

ARTICLE V.—The period within which a memorial by a person interested praying that an order made under section nine of the Local Government Act, 1894, shall not become law without further inquiry may be presented to the Local Government Board shall be the period of one calendar month after the making of the said order.

ARTICLE VI.—For the purposes of section nine of the Local Government Act, 1894, except so far as by sub-section (18) the said section is rendered applicable to a county borough, the several provisions hereinbefore mentioned of the Allotments Acts, 1887 and 1890, shall be adapted in the form and manner set forth in the schedule to this order.

SCHEDULE.

THE ALLOTMENTS ACT, 1887.

Section 2 (2).

(2.) A county council or a district council carrying into effect an order made under section nine of the Local Government Act, 1894, for putting in force as respects land to be taken for the purpose of allotments the provisions of the Lands Clauses Acts with respect to the purchase and taking of land otherwise than by agreement shall not under such order acquire land for allotments save at such price or rent that in the opinion of the said council all expenses, except such expenses as are incurred in making roads to be used by the public, incurred by the said council in acquiring the land and otherwise in relation to the allotments may reasonably be expected to be recouped out of the rents obtained in respect thereof.

Section 3 (5), (6), (7), *and* (8).

(5.) In construing, for the purposes of section nine of the Local Government Act, 1894, the provisions of the Lands Clauses Acts as incorporated with the said section, and the provisions of the said Acts and of sections seventy-seven to eighty-five of the Railways Clauses Consolidation Act, 1845, as incorporated with an order which has been made and has become final under the said section, the Local Government Act, 1894, together with any such order, shall be deemed to be the special Act; and the parish council, for any purpose for which the said council are authorised to acquire land by agreement, or for any purpose in relation to which land authorised to be acquired otherwise than by agreement may be assured to the said council, and the county council carrying into effect, for such last-mentioned purpose, any such order as is hereinbefore mentioned, and the county council or the district council carrying into effect, for the purpose of allotments, any such order as is hereinbefore mentioned, shall respectively, as the case requires, be deemed to be the promoters of the undertaking or the company, and the word "land" in relation to any purpose for which the

parish council are authorised to acquire land or in relation to allotments shall have the same meaning as in the Allotments Act, 1887.

(6.) Where land is purchased under an order in pursuance of section nine of the Local Government Act, 1894, otherwise than by agreement the following provisions shall apply:—

(*a.*) The county council and the Local Government Board shall not make an order for purchasing any park, garden, pleasure-ground, or other land required for the amenity or convenience of any dwelling-house, or any land the property of a railway or canal company which is or may be required for the purposes of their undertaking:

(*b.*) The county council and the Local Government Board shall, in making an order for purchasing land, have regard to the extent of land held in the neighbourhood by any owner, and to the convenience of other property belonging to the same owner, and shall, so far as is practicable, avoid taking an undue or inconvenient quantity of land from any one owner.

(7.) For the purpose of the hiring of land by a parish council for a purpose for which the said council are authorised to acquire land, any person, or body of persons, or body corporate authorised to sell land to the sanitary authority for the purposes of the Allotments Act, 1887, may, without prejudice to any other power of leasing, lease land to the parish council, without any fine or premium, for a term not exceeding thirty-five years.

(8.) The county council and the Local Government Board shall not make an order in pursuance of section nine of the Local Government Act, 1894, for purchasing any right to coal or metalliferous ore.

Section 11.

(1.) Where a parish council are of opinion that any land or any part of any land acquired by the said council by agreement in pursuance of section nine of the Local Government Act, 1894, or assured to the said council in pursuance of sub-section (14) of section nine of the Local Government Act,

1894, for a purpose for which the said council are authorised to acquire land, is no longer needed, for the purpose for which the said land was acquired, or that any other land more suitable for such purpose is available and may be acquired by the said council by agreement, the said council may, with the sanction of the county council, and subject to the provisions of sub-section (2) of section eight of the Local Government Act, 1894, sell or let such land or part, or exchange the same for other land more suitable for the said purpose, and may pay or receive money for equality of exchange.

(2.) Where a parish council are of opinion that any land or any part of any land assured to the said council in pursuance of sub-section (14) of section nine of the Local Government Act, 1894, for the purpose of allotments is no longer needed for such purpose, the said council may, with the sanction of the county council, and subject to the provisions of sub-section (2) of section eight of the Local Government Act, 1894, sell or let such land or part, or exchange the same for other land more suitable for the said purpose, and may pay or receive money for equality of exchange.

(3.) Where a district council having carried into effect an order which has been made and has become final under section nine of the Local Government Act, 1894, for putting in force for the purpose of allotments the provisions of the Lands Clauses Acts with respect to the purchase and taking of land otherwise than by agreement, are of opinion that any land or any part of any land acquired by the said council, is no longer needed for the purpose of allotments, or that any other land more suitable for such purpose is available and may be acquired by agreement, the said council, with the sanction of the county council, may sell or let such land or part, or exchange the same for other land more suitable for the said purpose, and may pay or receive money for equality of exchange.

(4.) The proceeds of a sale under the foregoing provisions of any land or any part of any land acquired by or assured to a parish council, and any money received by the said council on any such exchange as aforesaid by way of equality of exchange, shall be applied in discharging, either by way of a sinking fund or otherwise, the debts and liabilities of the said

council in respect of the land acquired or assured as aforesaid, or for any purpose for which capital money may be applied and which is approved by the Local Government Board; and the interest thereon (if any) and any money received from the letting of the land may, subject to the provisions of section eight of the Local Government Act, 1894, be applied in aid of the expenses of the said council under the Local Government Act, 1894.

(5.) The proceeds of a sale under the foregoing provisions of any land or any part of any land acquired by a district council carrying into effect an order which has been made and has become final under section nine of the Local Government Act, 1894, for putting in force for the purpose of allotments the provisions of the Lands Clauses Acts with respect to the purchase and taking of land otherwise than by agreement, shall be applied, and any surplus remaining, any interest, and any money received from the letting of the land may or shall be applied, as nearly as may be in the same manner, and with the same incidents and consequences, as if the said land had been acquired and otherwise dealt with in pursuance of the Allotments Act, 1887.

(6.) Sections one hundred and twenty-eight to one hundred and thirty-two (both inclusive) of the Lands Clauses Consolidation Act, 1845 (relating to the right of pre-emption of superfluous lands), shall apply upon any sale of any land in pursuance of the foregoing provisions: but, save as aforesaid, the provisions of the Lands Clauses Consolidation Act, 1845, with respect to the sale of superfluous lands shall not be deemed to be incorporated in section nine of the Local Government Act, 1894, or in any order made under that section.

Given under the Seal of Office of the Local Government Board, this Twenty-second day of May, in the year One thousand eight hundred and ninety-five.

G. SHAW LEFEVRE,
President.

L.S.

WALTER FOSTER,
Secretary.

FORMS.

No. 1.

Requisition for Meeting to determine whether a Burial Ground shall be provided.

15 & 16 Vict. c. 85, ss. 10, 11, and 16 & 17 Vict. c. 134, s. 7.

To the churchwardens [*or others*] of the parish of in the county of .

Requisition for meeting.

We, the undersigned ratepayers of the before-mentioned parish, being of opinion that the place of burial belonging to [*description of ground or grounds*] within such parish [is *or* are insufficient, *or* dangerous to health], do hereby authorise and require you forthwith to convene a meeting of the vestry of the said parish, for the special purpose of determining whether a burial ground shall be provided for such parish, under the provisions of the Acts 15 & 16 Vict. c. 85, and 16 & 17 Vict. c. 134. [And if it be resolved by the vestry that such burial ground shall be provided, to appoint not less than three nor more than nine persons, being ratepayers of the parish, to be the burial board of such parish.]

} Ratepayers of the said parish [*not less than ten*].

No. 2.

Notice of Meeting.

15 & 16 Vict. c. 85, ss. 10, 11; 16 & 17 Vict. c. 134, s. 7, and 18 & 19 Vict. c. 128, s. 3.

To be affixed to the church doors at least seven days (Sunday being the first) prior to the meeting.

Parish of , in the county of .

Notice of meeting.

We hereby convene a meeting of the vestry of this parish, to be held at , within the said parish, at o'clock in the of the day of

next, [in pursuance of a requisition, signed by ten or more of the ratepayers thereof requiring us to convene a meeting of the vestry,] for the purpose of determining whether a burial ground shall be provided for the said parish, under the provisions of the Acts 15 & 16 Vict. c. 85, 16 & 17 Vict. c. 134, [18 & 19 Vict. c. 128,] and 20 & 21 Vict. c. 81. [And if it be resolved by the vestry that such burial ground shall be provided, to appoint not less than three or more than nine persons, being ratepayers of the parish, to be the burial board of such parish.]

} Churchwardens [*or others to whom it belongs to convene meetings of the vestry*] of the parish of

No. 3.

Resolution to provide a Burial Ground.

15 & 16 Vict. c. 85, ss. 10, 11, and 16 & 17 Vict. c. 134, s. 7.

Resolution for burial ground.

At a meeting of the vestry of the parish of , in the county of , duly convened for the special purpose of determining whether a burial ground shall be provided for the said parish, under the Burials (beyond the Metropolis) Act, and held at , this day of , 18 ,

It is resolved by the said vestry,

That a [new *or* additional] burial ground shall be provided for the said parish, under the said Burials [beyond the Metropolis] Act (*a*).

It is also resolved by the said vestry,

That the following persons, being respectively ratepayers of the said parish [together with the Rev. N. X., the incumbent of the said parish], shall be and they are hereby appointed to be the burial board of the said parish; that is to say, A. B., C. D., &c. [*not less than three nor more than nine*].

(Signed) G. H.,
Chairman of the said vestry.

(*a*) Where the approval of the Secretary of State is necessary (20 & 21 Vict. c. 81, s. 9; 23 & 24 Vict. c. 64, s. 4) such approval must be obtained before the appointment of the board (34 & 35 Vict. c. 33, s. 1), for which purpose the meeting may be adjourned.

No. 4.

Notice to be sent to the Secretary of State.

15 & 16 Vict. c. 85, ss. 10, 11, and 16 & 17 Vict. c. 134, s. 7.

Notices to Secretary of State.

Sir, [My Lord,]

I have the honour to inform you that a meeting of the vestry of the parish of , in the county of , was held on the day of instant [last], pursuant to notice, given in accordance with the provisions of the Acts 15 & 16 Vict. c. 85, and 16 & 17 Vict. c. 134 [18 & 19 Vict. c. 128], and 20 & 21 Vict. c. 81; and that the following resolution was passed at such meeting, viz. :—

[*Copy resolution and append signature of the chairman of the meeting.*]

To the Secretary of State,
Home Office, Whitehall.

No. 5.

Summons for Meeting of Burial Board.

15 & 16 Vict. c. 85, s. 13, and 16 & 17 Vict. c. 134, s. 7.

Summons for meeting.

Sir,

We hereby summon a meeting of the burial board of the parish of to be held at , on , the day of , instant [next] at o'clock in the noon, for the purpose of [*object of such special meeting must be clearly defined, and forty-eight hours' notice at least is required*].

To } Members of the said Burial Board.

No. 6.

Certificate to Overseers for Payment of Expenses incurred by the Burial Board.

15 & 16 Vict. c. 85, s. 19, and 16 & 17 Vict. c. 134, s. 7.

Certificate for expenses.

We hereby certify that the sum of has been incurred by the burial board of the parish of , in the county

of , in carrying into execution the several Acts relating to burials beyond the metropolis; that is to say, for expenses in providing and laying out a burial ground under the said Acts [and building the necessary chapel (or chapels) thereon]; and you are hereby authorised and directed to pay such sum out of the rates for the relief of the poor in the said parish to for and on behalf of the said burial board.

Given under our hands , the day of , 18 .

To Members of the said Burial Board [*three at least*].

No. 7.

Mortgage of Poor Rates.

15 & 16 Vict. c. 85, s. 20; 16 & 17 Vict. c. 134, s. 7; and 20 & 21 Vict. c. 81, s. 19.

Mortgage of rates.

We, the burial board for the parish of , in the county of , in consideration of the sum of , with the sanction of the vestry of the said parish, and with the approval of the Commissioners of Her Majesty's Treasury (testified by the signatures of two of them hereunto affixed) to us advanced and paid by , the receipt of which said sum of is hereby acknowledged, do by virtue of the powers vested in us by the Acts 15 & 16 Vict. c. 85, 16 & 17 Vict. c. 134, and 20 & 21 Vict. c. 81, hereby charge the poor rates of the said parish with the payment to the said , his executors, administrators, and assigns, of the principal sum of , [by the instalments following, that is to say, the principal sum of (being one part of the said principal sum of) on the day of next, and the like principal sum of on the day of in every succeeding year until the whole of the said first-named principal sum of is discharged,] together with interest [thereon or on so much thereof as *or* on the principal which shall from time to time remain due] after the rate of

per centum per annum, to be payable half-yearly to the said , his executors, administrators, and assigns.

Given under our hands and under the seal of the burial board for the parish of , in the county of , this day of , one thousand eight hundred and .

(L.S.)

No. 8.

Transfer of Mortgage.

15 & 16 Vict. c. 85, s. 20; 16 & 17 Vict. c. 134, s. 7; and 20 & 21 Vict. c. 81, s. 19.

Transfer of mortgage.

I, A. B., of , in consideration of *l.* sterling already paid to me by C. D., of , do hereby assign and transfer unto the said C. D., his executors, administrators, and assigns, all the principal sum of *l.* secured to me by a mortgage under the seal of the burial board for the parish of , in the county of , dated on or about the day of , and numbered in the register of the said board [*if a second transfer, add*, and which mortgage, together with the principal and interest monies secured thereby, was assigned to me by a transfer, dated, &c.], and all interest now due and henceforth to become due in respect thereof, together with the said mortgage security, and all my interest in the rates thereby charged, and all powers and remedies for recovering, receiving, and giving effectual discharges for the said principal and interest monies hereby assigned.

In witness whereof I have hereunto set my hand and seal this day of , 18 .

N.B.—This transfer is to be registered within thirty days from the date. See pp. 218, 219.

No. 9.

Terminable Annuity Deed.

15 & 16 Vict. c. 85, s. 20; 16 & 17 Vict. c. 134, s. 7; and 20 & 21 Vict. c. 81, s. 21.

Terminable

We, the burial board for the parish of , in the county of , in consideration for the sum of

l. sterling, with the sanction of the vestry of the said parish and with the approbation of the Commissioners of Her Majesty's Treasury (testified by the signatures of two of them hereunto affixed), to us advanced and paid by A.B. the receipt whereof is hereby acknowledged, do, by virtue of the powers vested in us by the Acts 15 & 16 Vict. c. 85, 16 & 17 Vict. c. 134, and 20 & 21 Vict. c. 81, hereby grant unto the said A. B. yearly, during his life—*or* unto the said A. B., his executors, administrators, and assigns, yearly during the lives of the said A. B. and of C. D., of, &c., and E. F., of, &c., and the life of the survivor of them,—*or* for the term of years [*not exceeding* 30 *years*] from the day of , the annual sum of *l.*, to be issuing out of and charged upon the poor rates of the said parish of , the first of such annual payments to be made on the day of next. Annuity deed.

Given under our hands, and under the seal of the burial board for the parish of , in the county of , this day of , 18 .

(L.S.)

N.B.—This annuity is to be registered; see pp. 218 and 219.

No. 10.

Contract for the Purchase of Land.

15 & 16 Vict. c. 85, s. 26, and 16 & 17 Vict. c. 134, s. 7.

Agreement made the day of , 18 , between A. B., of, &c., of the one part, and the burial board of the parish of , in the county of , of the other part, whereby the said A. B. agrees to sell to the said burial board, and the said burial board agrees to purchase at the price of , all, &c. [*describing the property*], which premises are required by the said burial board for the purpose of forming a burial ground for [*or* for making additions to the burial ground of] the said parish of . And it is agreed that the said purchase money of shall be paid by the said burial board to the said A. B. on the day of next, at twelve at noon, at the office of at which time and place the purchase is to be completed, and Contract for purchase.

the said burial board is to have possession of the premises. And the said A. B. agrees, at his own expense, within days from this date, to deliver an abstract of his title to the solicitor of the said burial board, and to deduce a good title to the premises in fee simple free from all incumbrances. And on receiving the said purchase money, the said A. B. and all other necessary parties will convey the premises accordingly to the said burial board, or as they may direct.

No. 11.

Conveyance according to 8 *Vict.* c. 18, *and to* 15 & 16 *Vict. c.* 85, *ss.* 27, 28, *and* 16 & 17 *Vict. c.* 134, *s.* 7.

Conveyance

I, , of , in consideration of the sum of duly paid to me [*or as the case may be*, into the bank] pursuant to the Acts 15 & 16 Vict. c. 85, and 16 & 17 Vict. c. 134, by the burial board for the parish of , in the county of , appointed and constituted under the provisions and by virtue of the said Acts, do hereby convey to the said burial board, their successors and assigns, all [*describing the premises to be conveyed*], together with all ways, rights, and appurtenances thereunto belonging, and all such estate, right, title, and interest in and to the same as I am or shall become seised or possessed of, or am by the said Acts empowered to convey, to hold the premises to the said burial board, their successors and assigns for ever, according to the true intent and meaning of the said Acts. In witness whereof I have hereunto set my hand and seal this day of , one thousand eight hundred and .

(L.S.)

No. 12.

Conveyance in consideration of a Rent-charge according to 8 *Vict. c.* 18, *and to* 15 & 16 *Vict. c.* 85, *ss.* 27, 28, *and* 16 & 17 *Vict. c.* 134, *s.* 7.

Conveyance, rent-charge.

I, , of , in consideration of the rent-charge to be paid to me, my heirs and assigns, as hereinafter mentioned, by the burial board for the parish of , in the

county of , appointed and constituted under the provisions and by virtue of the Acts 15 & 16 Vict. c. 85, and 16 & 17 Vict. c. 134, do hereby convey to the said burial board, their successors and assigns [*describing the premises to be conveyed*], together with all ways, rights, and appurtenances thereunto belonging, and all my estate, right, title, and interest in and to the same and every part thereof. To hold the said premises to the said burial board, their successors and assigns, for ever, according to the true intent and meaning of the said Acts. They the said burial board, their successors and assigns, henceforth yielding and paying unto me, my heirs and assigns, the clear yearly rent of by equal [quarterly *or* half-yearly, *as agreed upon*] portions on the day of , and the day of , in every year, clear of all taxes and deductions, the first payment thereof to be made on the day of next. In witness whereof I hereto set my hand and seal this day of , one thousand eight hundred and .

(L.S.)

No. 13.

Conveyance where Burial Ground to be held and used as existing Churchyard, 15 & 16 Vict. c. 85, s. 26; 16 & 17 Vict. c. 134, s. 7; and 18 & 19 Vict. c. 128, s. 10.

Conveyance, to be held as churchyard.

Whereas the burial board for the parish of , in the county of , appointed and constituted under the provisions and by virtue of the several Acts of Parliament in that behalf made and passed, &c., &c., have agreed with A. B., of , in the county of , for the purchase of the piece or parcel of land hereinafter described and intended to be hereby conveyed as and for a new burial ground, for the parish of aforesaid, under the provisions of the said Acts, at or for the sum of ; And whereas the ratepayers of the said parish of assembled at a vestry duly convened on the day of last, under the provisions of the said Acts, in pursuance of public notice duly given in that behalf, resolved unanimously that the said new burial ground so provided for the said parish as aforesaid should be held and used in like manner, and subject to the same laws and regulations in

all respects as the existing burial ground or churchyard of the said parish. Now know ye that I the said in consideration of the sum of duly paid to me [*or as the case may be*, into the bank] pursuant to the Acts 15 & 16 Vict. c. 85, 16 & 17 Vict. c. 134, and 18 & 19 Vict. c. 128, by the burial board for the parish of , in the county of , appointed and constituted under the provisions and by virtue of the said Acts, do hereby convey to the said burial board, their successors and assigns, all [describing the premises to be conveyed], together with all ways, rights and appurtenances thereunto belonging, and all such estate, right, title, and interest in and to the same as I am or shall become seised or possessed of, or am by the said Acts empowered to convey. To hold the said premises to the said burial board, their successors and assigns, for ever, to the intent that the same may be held and used as a burial ground for the parish of aforesaid, in like manner, and subject to the same laws and regulations in all respects as the existing burial ground or churchyard of the said last-mentioned parish, according to the true intent and meaning of the said Acts. In witness whereof I have hereunto set my hand and seal this day of , one thousand eight hundred and .

(L.S.)

No. 14.

Contract for Works.

15 & 16 Vict. c. 85, s. 31, and 16 & 17 Vict. c. 134, s. 7.

Contract for works.

Articles of agreement, made the day of , one thousand eight hundred and , between , (hereinafter called the contractor,) for himself, his heirs, executors, and administrators, of the one part, and the burial board for the parish of , in the county of , of the other part.

Whereas, the said burial board [after giving fourteen days' public notice expressing the intention of entering into this contract] has accepted the tender of the said , to execute the works described in the schedule hereunto annexed, subject to the terms and provisions hereinafter expressed.

Now, the said , for himself, his heirs, executors, and administrators, doth hereby covenant and agree with the said burial board and their successors, that he the said contractor will, in a good, substantial, and workmanlike manner, and with materials sufficient and proper, of their several kinds, execute, perform, and complete all and singular the works mentioned in the specification hereto annexed, or thereby or by this contract implied, or to be reasonably inferred, in and about , according to the said specification, and to the plan and drawings prepared by , and according to such working and explanatory drawings and instructions as may from time to time be furnished by the surveyor for the time being of the said burial board: the several portions of the said works to be respectively finished and completed on or before the times respectively mentioned in the said specification, and the whole of the said works to be finished and completed, and to be cleared of all scaffolding and rubbish, and other impediments, on or before the day of , and the said works to be begun, proceeded with, and completed to the satisfaction of the said surveyor of the said burial board, to be testified by a writing or certificate under his hand.

That if any of the materials used, prepared, or intended to be used by the said contractor, shall be considered by the surveyor for the time being of the said burial board as unsound or improper, the said contractor will, upon notice in writing given by the said surveyor, reject and remove the same from the said ground: and in default of such rejection and removal within three days after such notice, it shall be lawful for the said surveyor to cause the same to be removed at the expense and risk of the said contractor, and all expenses thereby occasioned shall either be deducted out of any monies then or thereafter due to him from the said burial board, or shall be recoverable by them of the said contractor as liquidated damages.

That if the said surveyor shall be dissatisfied with any master, foreman, or workman, who shall be employed by the said contractor in the performance of the said works, and shall give notice in writing to that effect to the said contractor, he shall, within forty-eight hours afterwards, discharge from the

works such master, foreman, or workman: and if the said contractor shall neglect so to do, it shall be lawful for the said surveyor to discharge such master, foreman, or workman, and to hire and employ any other person in his stead, at the expense of the said contractor; such expense shall be deducted or recoverable as aforesaid.

That if the said surveyor shall consider any part of the work unsound, or improperly executed, the said contractor, on notice in writing given by the said surveyor thereof, shall cause such work to be immediately removed, and properly re-executed, without any extra charge whatever: and if the said contractor shall neglect so to remove and re-execute such work, it shall be lawful for the said surveyor to cause the same to be removed and re-executed at the expense of the said contractor: such expense to be deducted or recoverable as aforesaid.

That if the said burial board shall think proper, at any time before the said works are completed, to make any alterations, additions, or omissions to or in the same, and their surveyor shall give written instructions, signed by him, to the said contractor for such alterations, additions, or omissions: then, but not otherwise, the same shall be done or made by the said contractor: and any alterations, additions, or omissions, if the price be not stipulated in the said specification, shall be measured, or estimated and valued by the said surveyor; and the amount thereof, according to the price or value, shall be added to or deducted from the sum hereinafter mentioned.

That any loss or damage which may happen to the said works, or the materials or implements therein used during the progress of these works from any cause whatever, shall be borne and made good by the said contractor at his own expense.

That, during inclement weather, the said contractor, whenever and so long as thereto required by the said surveyor, will suspend the performance of the works, and effectually cover up and protect the same from injury by the weather.

And the said burial board do hereby for themselves and their successors, covenant with the said contractor, his executors and administrators, that the said burial board, or their successors, will pay unto the said contractor, his executors, administrators, or assigns, the sum of , being the price

agreed upon, in manner following: that is to say—the sum of per cent. per month on the amount of the work done as it proceeds, the same to be ascertained by the certificate of the said surveyor, and the remainder of the said sum to be paid within three calendar months after the said surveyor shall certify that all the said erections, buildings, works, and premises have been completely erected, done, and finished to his satisfaction: and it is agreed that the certificate of the said surveyor for the time being shall be final and conclusive between the said parties as to the progress, nature, quality, or completion of the said works, and in all other matters and things relating to the premises.

That if the said contractor shall, from bankruptcy, insolvency, or any cause whatever, be prevented or delayed in proceeding with the said works, according to this contract, or shall not proceed therein to the entire satisfaction of the said surveyor, it shall be lawful for the said burial board to rescind this contract by giving to the said contractor notice in writing, signed by their clerk or surveyor, and also to employ any other builder, workman, or other person, by contract, measure, and value, day work or otherwise, to proceed with the said works, and to complete the same: and on the service of the said notice, this contract shall become void as to the said contractor; but without prejudice to any right of action which the said contractor may be subject to for any neglect in not proceeding with the said works pursuant to this contract: and the amount then already paid to the said contractor by the said burial board shall be considered to be the full value of the works executed by him, and the said contractor shall thereupon be paid such a sum only as he may be entitled to, the same to be ascertained by such certificate as aforesaid: and the materials, whether prepared or unprepared, which may be at that time on the premises, shall become the property of the said burial board without further payment for the same: and the said contractor shall not in any manner prevent, hinder, or molest the said burial board or the persons employed by them, in proceeding with and completing the said works, and using such materials as aforesaid.

That the giving to or leaving at the usual or last place of abode of the said contractor, his executors or administrators,

or the giving to his or their foreman or superintendent of the works, of any notices, instructions, or drawings, to be given or furnished under this contract, shall be deemed good service or delivery thereof to the said contractor, his executors or administrators.

That if this contract be not duly performed, the said shall pay to the said burial board the sum of , as and for liquidated damages.

In witness whereof the said contractor has hereunto set his hand and seal the day and year first above written.

Signed, sealed, and delivered by the above-named , in the presence of .

The common seal of the said burial board was hereunto affixed at a meeting of the said board, held at the day of , the date thereof, by , in the presence of .

No. 15.

Bond for securing the Performance of Contract.

15 & 16 Vict. c. 85, s. 31, and 16 & 17 Vict. c. 134, s. 7.

Bond.

Know all men by these presents, that we , are held and firmly bound to in the sum of of lawful money of Great Britain, to be paid to the said or his certain attorney, executors, administrators, or assigns; for which payment, well and truly to be made, we bind ourselves and each of us, and any two of us, our and each of our and any two of our heirs, executors, and administrators, jointly, severally, and respectively, firmly by these presents: sealed with our seals. Dated this day of , one thousand eight hundred and .

Whereas, by a certain contract or agreement, bearing even date with the above obligation, and made between the above-bounden , of the one part, and the burial board of

the parish of , in the county of , of the other part, the said contracted with the said burial board to execute and perform the works therein mentioned in the manner and by the time therein specified, and subject to such terms, provisions, and stipulations as in the said contract or agreement are particularly mentioned and set forth, and as on reference thereto will more fully appear. Now the condition of the above obligation is such, that if the above-bounden , his executors or administrators, do and shall well and truly perform, fulfil, and keep all and every the covenants, clauses, provisoes, terms, and stipulations in the said recited contract or agreement mentioned or contained, and on his part to be observed, performed, fulfilled, and kept, according to the true intent and meaning thereof, then the above bond or obligation shall become void, or else shall be and remain in full force and virtue.

Signed, sealed, and delivered by the above-bounden , in the presence of .

No. 16.

Notice of Interment.

15 & 16 Vict. c. 85, s. 32, and 16 & 17 Vict. c. 134, s. 7.

Notice of interment.

Sir,—You are requested to give directions that the necessary preparations may be made for the interment, in the burial ground of , of the body of [*name in full, with description, or, if under age, name, address, and occupation of parents*], who died on the day of instant [last], in the parish of . The ceremony will be performed by the Rev. , in the [consecrated or unconsecrated] portion of the ground, in the [grave space, brick grave, *or* vault] numbered on the plan of the said burial ground [the exclusive right of burial in which has been acquired by the undersigned [for years] in perpetuity].

I am, &c.

A. B.

To the Clerk of the Burial Board for the Parish of .

N.B.—This notice must be delivered between [10 and 4] at the office of the burial board days, exclusive of Sunday, prior to any interment. If the right of burial has been purchased, state for what period, and append signature of the owner.

No. 16A.

Notice of Burial.

Under 43 & 44 Vict. c. 41, ss. 1 and 3.

I , of , being the relative [*or* friend, *or* legal representative, *as the case may be, describing the relation if a relative,*] having the charge of or being responsible for the burial of A. B., of , who died at , in the parish of , on the day of , do hereby give you notice that it is intended by me that the body of the said A. B. shall be buried within the [*here describe the churchyard or graveyard in which the body is to be buried,*] on the day of , at the hour of without the performance in the manner prescribed by law of the service for the burial of the dead according to the rites of the Church of England, and I give this notice pursuant to the Burial Laws Amendment Act, 1880.

To the Rector [*or, as the case may be,*] of .

No. 16B.

Certificate of Burial.

Under 43 & 44 Vict. c. 41, s. 10.

I , of , the person having the charge of [*or* being responsible for] the burial of the deceased, do hereby certify that on the day of , A. B. of , aged , was buried in the churchyard [*or* graveyard] of the parish [*or* district] of .

To the Rector [*or, as the case may be,*] of .

No. 17.

Grant of Exclusive Right of Burial.

15 & 16 Vict. c. 85, s. 33, and 16 & 17 Vict. c. 134, s. 7.

Grant, right of burial.

We, the burial board for the parish of , in the county of , in consideration of the sum of , paid by , of , the receipt whereof is hereby acknowledged, do, by virtue of the powers vested in us by the Acts 15 & 16 Vict. c. 85, and 16 & 17 Vict. c. 134, hereby grant unto the aforesaid the exclusive right of burial in [*here describe the particular part of the ground or the vault, or other right purchased,*] being part of the burial ground provided under the said Acts by the burial board aforesaid; to hold the same to the said , [his heirs and assigns for ever, *or* for the term of years, as may be agreed upon,] for the purpose of burial, subject, nevertheless, to the payment of such fees or sums as reserved by the said Acts.

Given under our hands, and under the seal of the burial board for the parish of , in the county of , this day of , one thousand eight hundred and . (L.S.)

For forms of grant of right of burial and of assignment of such right under the Cemeteries Clauses Act, 1847, see the Schedules to that Act, *ante*, p. 290.

BOOKS FOR USE OF BURIAL BOARDS.

No. 1.—*Order Book*, p. 861.

Books, &c.

For interments including receipts for money paid, and authority to the sexton. This book will contain: *first*, the name and description of the person to be interred, hour and mode of burial, reference to the register, fees paid, &c., all which particulars will remain in the book; *second*, an abstract of such particulars, as instructions for the sexton; *third*, a receipt for the fees, with requisite notice for conductor of the funeral.

No. 2.—*Interment Book, or Register of Graves*, p. 862.

Serving as an index to the situation of each grave; in which will be entered the exact situation of every grave used, together with the date of each burial (entered short, thus: "5 : 7 : 73 :"), and reference to the order book for further particulars (*a*).

No. 3.—*Grant Book*, pp. 859, 862.

For purchased graves and vaults with record of each. Containing form for grants of land purchased for family graves, plots, or vaults.

No. 4.—*Receipt Book*, p. 862.

For all payments except burials, being forms for receipt for payments on any occasion other than an order for burial: *e.g.*, purchase of family graves or plots, and any work executed.

No. 5.—*Cash Book*, p. 863.

Conveniently headed and ruled, distinguishing receipts for burial in consecrated ground from the part not consecrated. The reference to the ledger will be little used, as almost all will be ready-money payments. If found requisite, a small ledger may be provided anywhere.

No. 6.—*Monthly Sheet*, p. 863.

Headed and ruled to check cash account. This will show the entire transactions of the month, serve to check the cash account, and obviate in most cases the necessity for a ledger.

No. 7.—*Register of Burials*, p. 864.

The Act requires that burials in the consecrated part shall be distinguished in the register from those in the part not consecrated. This may be done by affixing the letters "N.C." to the number of the grave when situate in the latter, or a separate book may be kept, lettered on the back accordingly: either of which will probably be more convenient than the use of different parts of the same book.

No. 8.—*Certificate Book*, p. 864.

Of extracts from register.

No. 9.—*Index*, p. 865.

Of register, interment book, and grant book, the entries in which should be as far as practicable alphabetically arranged.

(*a*) It may be found convenient to have two of these books—one for single and the other for family graves, lettered accordingly on the back and the title-page.

No. 10.—*Regulations*, p. 867.

Suggested for care and conduct of cemeteries, including table of fees, plan, &c.

No. _____ BURIAL GROUND. Order book.

RECEIVED OF _____ the Sum of _____

Pounds, _____ Shillings, _____ Pence, for

Interment of _____ in Letter _____ No. _____

Dated the _____ day of _____ 18 .

£ : :

Registrar.

The Funeral to be at the Ground on _____ day at _____ o'clock m.

No. 1.—*Order Book* (*a*).

No. _____ *R. No.* _____

Date 18 o'clock M.

Name

Age

Rank, Trade, or Profession

Late Residence

Parish or District

Mode of Interment

Freehold when purchased

Letter No.

Name of Minister

18 RECEIVED OF

Mr.

£ s. d.

Total

No. _____

Date 18 o'clock M.

Name

Age

Mode of Interment

Letter

Number

Name of Minister

Name of Labourer

Date

(*a*) See p. 859.

Interment.

No. 2.—*Interment Book, or Register of Graves* (*a*).

_____ BURIAL GROUND.

SITUATION OF GRAVE.		DATE, AND NUMBER IN ORDER BOOK.											
Letter.	Number.	Date.	No.	Date.	No.	Date.	No.	Date.	No.	Date.	No.	Date.	No.

Grant.

No. 3.—*Grant Book* (*a*).

BURIAL GROUND.

Register of Grants of Graves and Vaults.

No.
Name
Rank, Trade, or Profession
Street or Place
Parish, District, or Township
Borough or County
Nature of Grant
Size and Depth
Sum received
Letter No.
No. in Order Book
Date of Grant

[See Form for Grant of exclusive right of Burial, No. 17, p. 859.]

Receipt.

No. 4.—*Receipt Book* (*a*).

No.
BURIAL GROUND.
Received of
Name
Date
Description
Letter No.
No. in Order Book
Amount £

* A family grave plot and right of building a vault, &c., as the case may be.

No.

BURIAL GROUND.

18

Received of Mr. the
sum of Pounds Shillings
Pence, for*
in Letter No.

£ : :

Registrar.

(*a*) See p. 860.

No. 5.—*Cash Book* (*a*).

Dr. BURIAL BOARD. *Cr.*

18 CASH. CONTRA.

Date.	From whom received.	No. of Book.		Board's Charges.		Other Fees.	Total.	Date.	To whom paid.	Folio in Ledger.	Amount.	Total.
		Order.	Receipt.	Consecrated.	Not Consecrated.							

No. 6.—*Monthly Sheet* (*a*).

BURIAL GROUND.

Abstract of Accounts for Freehold Vaults, Graves, Interments, &c., for the month of 18 .

RECEIPTS. EXPENDITURE.

	No. in Order Book.	Purchased Freeholds.			Interments.			Excavating, &c.	Brick and Stone Work.	Extracts from Register, and Sundries.	No. in Order Book.	Arrears.	Total.		Excavating, &c.	Brick and Stone Work.	Sexton.	Total.
		Vaults.	Bricked Graves.	Earthen Graves.	In Purchased Graves, &c.	Without Purchase.	With Privilege of Purchase.											
1																		
2																		
3																		
4																		
5																		
6																		

(*a*) See p. 860.

Cash. Monthly sheet.

Register. Certificate.

No. 7.—*Register of Burials* (*a*).

Folio
Year 18 .

_____ BURIAL GROUND.

No.	Date.	Name.	Age.	Rank or Profession.	Abode.	Parish or District.	No. in Order Book.	Where Interred.			Signature of Officiating Minister.	Signature of Registrar.
								Letter.	No.	C. or N.C.		

_____ BURIAL GROUND.

Extracts from Register.

No.

Folio

Year 18

No.

Name

Extract Fee

Extracted this day of 18

No. 8.—*Certificate Book* (*a*).

Folio _____ BURIAL GROUND.
Year 18 . CERTIFIED EXTRACT FROM REGISTER OF BURIALS.

No.	Date.	Name.	Age.	Rank or Profession.	Abode.

Parish or District.	No. in Order Book.	Where Interred.			Signature of Officiating Minister.	Signature of Registrar.
		Letter.	No.	C. or N. C.		

I hereby certify that the above-written is a true Copy of an Entry in the Register Book of Burials, for Burial Ground.

Extracted this day of 18 . _____ *Registrar.*

(*a*) See p. 860.

No. 9.—*Index* (*a*).

Index.

Name.	Register.		Interment Book.		Grant Book.	
	No.	Folio.	No.	Folio.	No.	Folio.

(*a*) See p. 860.

Rules.

No. 10.

[Suggested Rules, Fees, &c., for Burial Boards.]

_____ BURIAL GROUND.

The Offices are open daily from o'clock until , Sundays excepted.

The burial ground is open to the public from seven o'clock a.m. on week-days, until sunset, and on Sundays from two o'clock p.m. until sunset; but children under ten years of age cannot be admitted, except under the care of responsible persons.

TABLE OF CHARGES AND FEES.

(*Payable to the board after having been approved by the Secretary of State* (*a*).)

	For the Board.	Incumbent.	Officiating Minister.	Clerk.	Sexton.	Total.
	£ s. d.					
Freehold Family Grave Plot, to contain six grave spaces (*b*) ..	3 3 0					
Ditto single grave	1 1 0					
Board fee for each interment .	0 5 0					
Ditto for children under 12 years of age	0 2 6					
Right to construct a vault	3 3 0					
Ditto single brick grave	1 1 0					
Re-opening grave or vault	1 1 0					
Right to erect head and foot stones (*c*)	0 10 6					
Ditto tomb or flat stone	3 3 0					
Ditto iron palisade	1 1 0					
Use of hand hearse	0 2 6					
Searching Register of Burials one year	0 1 0					
Ditto each additional year	0 0 6					
Certified extract	0 2 6					

Burial fees for non-parishioners half as much in addition.

Incumbent, clerk, and sexton's fees as per custom of the parish, may be printed in the parallel columns, received by the clerk to the board, as *quasi* agent for the parties, and distributed accordingly.

REGULATIONS.

1. All charges for interments, and for the purchase of freehold graves and vaults, monuments, and gravestones, must be paid for at the time the order is given, at the office.

(*a*) The board fees *alone* must be sent for approval, omitting those for searches and extracts from register.

(*b*) At this price the ground so actually used will be sold at the rate of 600 guineas per acre.

(*c*) In many cases it has been the custom to divide the ground into different classes, but it would be much better to intermix graves on which monuments are not likely to be placed among those where such erections may be expected; thus relieving the crowded appearance of monuments in one part and the bare appearance of the ground in others, as well as avoiding the perpetuation of vain distinctions.

2. Certificate of death to be produced. The name of the parish or district from which the body is removed, and all other information required, to be stated at the time of paying the fees. Rules.

3. The time named for a funeral to be that when the procession is to be at the ground, and as it is desirable that the time fixed should be punctually observed, to prevent inconvenience, an extra fee of will be charged when the funeral be more than minutes late.

4. Two days' previous notice to be given for an interment in graves selected by the board, exclusive of Sunday, and three days if a vault or brick grave be required.

[If the requisite notice be not given, an extra charge will be made for working at night.]

5. All brick or stone work in the vaults and graves to be executed by the board.

6. No vault or grave, in which the exclusive right of burial has been purchased, shall be opened without the owner's consent in writing.

7. In all unbricked graves, coffins of wood only to be used; no interment will be allowed nearer the surface than 4 feet for an adult, and 3 feet for a child under twelve years of age. Every coffin in a bricked grave or vault to be separately entombed in an air-tight manner.

8. All foundations, removal and fixing of memorials, to be executed by the board.

9. No foot-stones nor iron railing exceeding 2 feet 6 inches in height allowed, except with the special consent of the board. Head-stones only allowed alternately, not to exceed 4 feet high.

10. Drawings of every monument or gravestone differing from designs previously approved by the board, with a copy of the inscription intended to be inserted, if they contain anything beyond the name, age, and date of decease, to be submitted for their approval; and no monument or gravestone can be admitted without such approval. The number of the grave or vault corresponding with the interment book must also be placed on each monument or gravestone.

11. All private graves and vaults, with the monuments and gravestones, to be kept in repair by the owners. [The board will keep them in repair for a fee of annually.]

12. The hours of interment on week-days are fixed from until o'clock (*a*). For interments at other hours extra fees will be charged. On Sunday, no interments will take place.

A plan of the ground, showing the situation of each grave, is kept at the office, and may be seen without charge.

The burial ground is effectually guarded, and the board forbid any gratuity being received by any of their servants.

All further information to be obtained at the office (*b*).

The board reserve to themselves the right, from time to time, to make any alterations in the foregoing charges and regulations.

By order of the Burial Board.
Clerk.

_____ 18 .

(*a*) This should be fixed with the concurrence of the incumbent.
(*b*) State where situated.

EXPLANATORY PLAN OF _____ BURIAL GROUND (*a*).

	1	2	3	4	5	6	7	8	9	10	11	12	13	14	and so on
A		C	O N	S E	C R	A T	E D			NOT	CO	NSE	CRA	TED	A
B														⊙	B
C															C
and Aa															and Aa
& Ba														*	& Ba
& Ca		9-ft. by 4-ft.				i 6-ft. by 3-ft.							*		& Ca
and Ab				(		ii									and Ab
& Bb			*			iii									& Bb
& Cb						iv (		●							& Cb
and															and
so on															so on
	1	2	3	4	5	6	7	8	9	10	11	12	13	14	and so on

(● Such a mark may indicate that one common interment has taken place in grave space Ab 4.
" " " the grave space Cb 8 has been purchased, but no interment yet taken place.
⊙ " " " the purchased grave space B 14 has received three bodies.
) " " " the child's grave Bb iv has received one body.

* Family grave plots.

(*a*) See pp. 861 to 865.

The following TABLES will afford Specimens of the FEES which have been adopted by some Boards formed under the Burial Acts (a).

Fees.

No. 1.—[*POP. above 11,000.*]

TABLE of FEES and PAYMENTS *fixed and settled by the —— Burial Board to be received for interments, Vaults, Graves, and otherwise, in the Burial Ground for the parish of ——, pursuant to the Burials (beyond the Metropolis) Act*, 1853.

——	For the Board (b).	For Incumbents in Consecrated Ground.	For officiating Ministers in Unconsecrated Ground.
	£ s. d.	£ s. d.	£ s. d.
On interment of parishioners in a common grave (if corpse not taken into chapel)...	Free.	Free.	Free.
The like if carried into chapel	Free.	0 5 0	0 5 0
On interment in a common grave of out-parishioners dying in the union workhouse, or otherwise in the parish, if corpse not taken into chapel	0 10 0	0 6 8	0 6 8
The like if carried into chapel	0 10 0	0 11 8	0 11 8
For a vault in perpetuity to contain four corpses abreast, not exceeding 9 feet deep	4 4 0	4 4 0	4 4 0
The like, three corpses abreast	3 3 0	3 3 0	3 3 0
The like, two corpses abreast	2 2 0	2 2 0	2 2 0
If more than 9 feet deep, per foot extra ...	1 1 0	—	—
For a bricked or boarded grave for one corpse only, not exceeding 9 feet deep...	1 1 0	1 1 0	1 1 0
For re-opening a vault or brick grave ...	0 10 0	—	—
For interments in select situations ...	1 1 0	—	—
Entry in register of vault or grave in perpetuity	0 2 6	—	—
Certificate thereof	0 2 6	—	—
For erecting a headstone	0 10 6	0 10 0	0 10 0
For erecting a footstone	0 3 6	—	—
For every additional inscription on any stone	0 2 6	—	—
For erecting or placing a coffin-shaped tomb, or flat stone, or stone slate, or wood enclosure over a grave, not exceeding 18 inches high (without palisades)	1 1 0	1 1 0	1 1 0
For erecting any other tomb, or stone, or palisades only, not exceeding 8 feet by 4 feet...	2 2 0	1 1 0	1 1 0
The like, not exceeding 10 feet by 8 feet...	4 4 0	1 1 0	1 1 0
For enclosing any tomb or stone with palisades, any space not exceeding 8 feet by 4 feet (extra)	1 1 0	—	—
The like, not exceeding 8 feet square (extra)	2 2 0	—	—
On erecting any mural monument in chapels, not exceeding 3 feet by 2 feet...	5 5 0	5 5 0	5 5 0
For an extra size, subject to agreement.			

(a) These specimen tables are not given as having any authority; but are merely selected from a parliamentary return to show the kind of scale adopted in some places.

(b) The fees in this column must be approved by the Secretary of State, for which purpose they should be submitted separately, having been first published in the district. See also 20 & 21 Vict. c. 81, s. 17, p. 216.

Fees.

No. 1—(*continued*).

FOR SEXTON'S FEES.	For the Board. £	s.	d.
For digging and filling in a grave for a person buried at the expense of the parish or union, and tolling bell	0	2	6
For digging and filling in a common grave for an artisan, labourer, his wife, or child, 3*s.*; tolling bell, 1*s.*	0	4	0
For digging and filling in a common grave for any gentleman or tradesman, or master of business, his wife or child, 5*s.*; tolling bell, 2*s.* 6*d.*	0	7	6
Every grave to be 6 feet deep; if above, per foot extra... ...	0	1	0
For digging, excavating, and levelling ground over a vault for two corpses abreast, 9 feet deep, and attending burial ...	2	2	0
For every additional corpse...	0	7	0
For filling up and turfing a grave when required	0	2	0
For tolling chapel bell, if above one hour, extra, and so on in proportion	0	1	0

FOR HAND-HEARSE.			
For the use of a hand-hearse within two miles from the burial-ground (without attendants) at the burial of a child under ten years of age at the expense of the parish or union	0	1	6
The like for an adult labourer	0	2	6
The like for a tradesman or any other person	0	5	0
If buried in a brick or walled grave or vault	0	7	6
For every mile, or part of a mile, beyond two miles, extra ...	0	1	0

For searching register of burials one year...	0	1	0
For every additional year	0	0	6
For each certified copy of an entry therein	0	2	6

All walls of vaults to be 9 inches thick, and every wall between two vaults to be a party wall: all damage to any boundary wall, by making a vault or grave, to be substantially repaired by the party causing the same.

All inscriptions and plans of monuments, tablets, and stones, to be erected in the cemetery or chapels, to be submitted to the board for its approval.

On interments of non-parishioners, all fees and payments (except the 3rd and 4th in this table) to be charged double.

The foregoing fees do not include the parish clerk's fees.

By order of the Board,

[Date.] ———, Clerk.

No. 2.—[*POP. under 5,000.*] Fees.

BURIAL BOARD, *constituted under and by virtue of the Burials Acts*, 16 & 17 *Vict. c.* 134, *and* 17 & 18 *Vict. c.* 87, *for the Borough of* ————.

————	For the Board. (*a*)			For Incumbent in Consecrated Ground.			For officiating Minister in Unconsecrated Ground.		
	£	*s.*	*d.*	£	*s.*	*d.*	£	*s.*	*d.*
Interment of any person, whether child or adult, at the expense of the parish or union		—		0	1	0	0	1	0
Interment of any other person, being a parishioner	0	5	0	0	2	6	0	2	6
If a non-parishioner...	0	10	0	0	6	8	0	2	6
Interment in a brick grave, not exceeding 9 feet by 4 feet 6 inches, 10 feet deep, not in perpetuity, site approved by the board	2	10	6	3	3	0	0	10	6
For a brick grave, not exceeding 9 feet by 4 feet 6 inches, 10 feet deep, in perpetuity, site approved by the burial board ...	1	1	0		—			—	
For a double brick grave or vault, not exceeding 9 feet by 8 feet, 10 feet deep, not in perpetuity, site approved by the burial board, including fee on first interment...	5	5	0	3	3	0		—	
If in perpetuity, extra	1	1	0		—			—	
Fee on interment in a vault or brick grave, re-opened for a parishioner	1	1	0	0	10	6	0	10	6
If a non-parishioner	2	2	0	1	1	0	0	10	6
Erecting a headstone	0	10	6	0	10	6		—	
Placing a flat stone over a grave	1	1	0	1	1	0		—	
Erecting a tomb over a brick grave or vault	3	3	0	3	3	0		—	
Inclosing with palisades a single grave or vault	1	1	0	2	2	0		—	
Ditto, a double grave or vault	2	2	0	2	2	0		—	
For erecting a mural monument in mortuary chapel, not exceeding 24 inches by 18 inches	5	5	0		—			—	
For every additional inscription on any headstone, tomb, or memorial	0	5	0		—			—	
For certificate of registry of grant of vault or brick grave	0	2	6		—			—	
For searching registry of burials, one year	0	1	0		—			—	
For ditto, every additional year	0	0	6		—			—	
For each certified copy of entry	0	2	6		—			—	
If the interment should take place out of the regulated hours, an additional fee of	0	2	6	0	2	6	0	2	6
Interment of still-born child	0	2	6		—			—	
For digging a common grave	0	7	6		—			—	
For tolling bell of parish church if ordered	0	2	6		—			—	

(*a*) See notes, p. 869.

Fees.

No. 3.—[*POP. above 4,500.*]

TABLE of FEES and PAYMENTS *in respect of Interments in the Cemetery at* ———, *in the Consecrated or Unconsecrated Ground. Established under the Statute* 16 & 17 *Vict. c.* 134, *and the Acts incorporated therewith. Opened* 1*st December*, 1854.

Interments of Parishioners (graves 6 feet deep); (*a*).	£	*s.*	*d.*
Ground A to B	1	10	6
Ground B to C	1	0	6
Ground C to D	0	13	6
For every foot after 6 feet, and down to 9 feet, an addition per foot of	0	1	6
For every foot after 9 feet, an addition per foot of	0	2	6
Non-parishioners (same depth):			
Ground A to B	2	10	2
Ground B to C	1	15	2
Ground C to D	1	4	8
For every foot after 6 feet, and down to 9 feet, an addition per foot of	0	1	6
For every foot after 9 feet, an addition per foot of	0	2	6
Children, Parishioners and Non-parishioners:			
From 1 year up to 12 years...	0	9	6
Infants	0	7	0

Erection of Gravestones, Monuments, &c.:

A charge of 15*s.* will be made in addition to the above when any grave, head, body stone, or monument is erected; and any additional ground beyond two feet six inches in width will be charged at the rate of 6*s.* a foot, over and above and in addition to the surplice and other fees for the stones.

Fee for tolling the bell (if required), 1*s.* in addition to the above.

Hours of interment in the consecrated or unconsecrated ground, nine o'clock a.m. to six o'clock p.m. from the 25th March to 29th September, and from the 29th September to 25th March, nine o'clock a.m. to four o'clock p.m. Interments on Sundays will be taken at the following hours only: for the consecrated ground, at two o'clock p.m.; for the unconsecrated ground, at one o'clock p.m.; at which hours respectively the funeral procession must be punctually on the ground.

Orders for funerals must be given to the sexton two clear days (exclusive of Sunday) before the funeral, and all fees and charges must be paid at the time the order is given.

By order of the Board,

———, Clerk.

By resolution of vestry of the inhabitants of this parish, this board is authorised to pay to the dissenting minister officiating at funerals the same amount or fee as that payable to the incumbent in respect of church funerals.

[Date.] ———, Clerk.

(*a*) As to fees payable to the board, see note, p. 869.

No. 3—(*continued*).

EXPLANATORY TABLE OF FEES, showing the Apportionment.

	Vicar's Fees.	Sexton's Fees.	Clerk's Fees.	Total.	Board's Charges for Opening the Ground (*a*).	Total Charge for Interment.
Interments of Parishioners (graves 6 feet deep):	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.
Surplice fee, ground A to B	0 3 0	0 6 6	0 1 0	0 10 6	1 0 0	1 10 6
,, ground B to C	0 3 0	0 6 6	0 1 0	0 10 6	0 10 0	1 0 6
,, ground C to D	0 3 0	0 6 6	0 1 0	0 10 6	0 3 0	0 13 6
Non-parishioners (same depth):						
Vicar's fee for breaking the ground, A to B ...	0 6 8	0 6 6	0 1 0	1 0 2	1 10 0	2 10 2
Surplice fee	0 6 0	—	—	—	—	—
The like, B to C	0 12 8	0 6 6	0 1 0	1 0 2	0 15 0	1 15 2
The like, C to D	0 12 8	0 6 6	0 1 0	1 0 2	0 4 6	1 4 8
Children, Parishioners and Non-parishioners:						
From 1 year up to 12 years	0 3 0	0 4 0	0 0 6	0 7 6	0 2 0	0 9 6
Infants	0 3 0	0 2 0	0 0 6	0 5 6	0 1 6	0 7 0

(*a*) See notes, p. 869.

[No. 4.—*POP. under 170,000.*]

Fees.

TABLE of FEES *determined on by the* BURIAL BOARD *of* ————.

CHARGES AND FEES: (*a*)

	£	s.	d.
Interments of parishioners:			
1st class (adults)	2	2	0
2nd class (adults)	1	5	6
3rd class (adults)	0	15	0
Interments of Non-parishioners:			
1st class (adults)	3	3	0
2nd class (adults)	1	17	6
3rd class (adults)	1	2	6

The above charges in all cases provide for the tolling of the bell.

A deduction of one-third of the interment fees is allowed for children under 12 years of age.

Fees payable to Vicar from each Interment:						
1st class.	In each adult interment	0	6	0		
,,	,, child's ,, ...	0	4	0		
2nd class.	,, adult ,, ...	0	4	8		
,,	,, child's ,, ...	0	3	1½		
3rd class.	,, adult ,, ...	0	4	2		
,,	,, child's ,, ...	0	2	9½		
Fees payable to Church Trustees:						
1st class.	In each adult interment	0	12	0		
,,	,, child's ,, ...	0	8	0		
2nd class.	,, adult ,, ...	0	5	0		
,,	,, child's ,, ...	0	3	4		
3rd class.	,, adult ,, ...	0	2	6		
,,	,, child's ,, ...	0	1	8		

Charges for ground for private Graves or Vaults for Parishioners or Non-parishioners, in addition to the Interment Fees:

For a single private grave, 6 ft. 6 in. by 2 ft. 6 in. in the clear of brickwork, and 7 ft. deep, with the right of placing a flat or head stone	3	3	0
For a double private grave, 6 ft. 6 in. by 4 ft. in the clear, and 9 ft. deep	5	15	0
For a private grave, 6 ft. 6 in. by 6 ft. 6 in., and 9 ft. deep...	11	11	0
For a private grave, 6 ft. 6 in. by 9 ft., and 9 ft. deep ...	15	15	0

An extra charge will be made for a step entrance to any private grave, or for additional depth, viz., 1*s.* 6*d.* per foot, from 7 to 10 feet; 2*s.* 6*d.* from 10 to 14 feet; 3*s.* 6*d.* from 14 to 17 feet; 5*s.* from 17 to 20 feet; excavating, 3*s.* per cubic yard.

(*a*) As to fees payable to the board, see note, p. 869.

Fees payable to Parish Clerk:				£	s.	d.	Fees.
1st class.	In each adult interment			0	4	0	
,,	,, child's ,,			0	2	8	
2nd class.	,, adult ,,			0	1	6	
,,	,, child's ,,			0	1	0	
3rd class.	,, adult ,,			0	1	6	
,,	,, child's ,,			0	1	0	
Fees payable to Sexton (*a*):							
1st class.	In each adult interment			0	4	0	
,,	,, child's ,,			0	2	8	
2nd class.	,, adult ,,			0	3	6	
,,	,, child's ,,			0	2	4	
3rd class.	,, adult ,,			0	3	0	
,,	,, child's ,,			0	2	0	

Fees for Non-parishioners, add one-half more.

The same charges are made for interments in the unconsecrated as in the consecrated ground, and the same fee is allowed to Dissenting ministers as to the officiating clergyman.

———, Clerk.

[Date.]

(*a*) The office of sexton has recently been abolished, and the duties undertaken by the Board, who now receive the sexton's fees.

LONDON COUNTY COUNCIL.

RETURN OF BURIAL GROUNDS IN THE COUNTY OF LONDON.

Ordered by the Council on 30th July, 1895, to be printed.

A Return of the Burial Grounds, disused and in use, which still exist within the County of London, with a report upon their size, ownership, and present condition, together with a list of those in the City of London.

Prepared for the Council by Mrs. Holmes.

THE burial grounds which exist in the county and city of London are 362 in number. Of these 41 are churchyards and cemeteries still in use, a few being burial grounds in which interments only occasionally take place, either in graves already dug, or under the regulation of the Home Secretary. The other 321 are disused burial grounds, most of which were closed by order in council between the years 1853 and 1858, and 90 of which are now public recreation grounds.

While many of the graveyards in the following list are smaller than they once were, there existed within a reasonable period between 100 and 150 which have been entirely built over or appropriated as sites for railways and new roads; but with these this return does not deal.

In 1884 an Act was passed to prevent the erection of buildings on burial grounds, known as the Disused Burial Grounds Act, 47 & 48 Vict. This was materially extended by clauses in the Open Spaces Act of 1887, and by a "burial ground" is now meant any land set aside for interments, whether closed by order in council or not. The London County Council has special authority to enforce this Act within the metropolis, powers to carry it out having been conferred upon the late Metropolitan Board of Works under

its Various Powers Act of 1885. In the County of London the only encroachment which is permissible on a disused burial ground is the enlargement of an existing place of worship, although in the City the Commissioners of Sewers have the right, under certain circumstances, to appropriate portions of them for the widening of roads. But, nevertheless, encroachments on places of interment are frequent, mortuaries, schools, out-houses, stables, &c., being often erected in them; and as many of these grounds are, to a casual observer, unrecognisable as graveyards, being used as cooperages, builders' yards, asphalted playgrounds, &c., the law is easily evaded.

With a view to recording the actual site of all the existing burial grounds in London, this return was ordered to be made by the council, and in February of this year the work was entrusted to me, as I had had previous experience in identifying and recording the metropolitan places of interment. It is accompanied by the ordnance map of London, on a scale of 25 inches to the mile, upon which these grounds are marked and painted in colours.

Upon the question of the general condition of the London burial grounds, I may say that those which have been laid out for public recreation, and are being maintained by the London County Council, the vestries, district boards or burial boards, are not only the most sanitary, the most useful, and the most pleasing, but are also the least in danger of being disused or encroached upon. Many of them are kept up with great reverence and care, and are bright and attractive all the year round. Amongst the burial grounds which are closed to the public, by far the best kept are those which belong to the Society of Friends, a fact which was recognised by G. A. Walker as long ago as 1847, and which is still most noticeable. Some of the parochial churchyards and some of the Jewish grounds are also well kept, while others are not as neat as they should be. Most of those grounds which were started about 100 years ago by private speculators, and a few of the parish and dissenting burial grounds, are now being used as builders' yards, carters' yards, &c.; but the burial grounds which are most untidy, insanitary and neglected, where the tombstones are broken and tumbling about, where the grass is never cut, and where unsavoury rubbish of all kinds is allowed to accumulate,

are certain, not very many, graveyards adjoining Baptist and Congregational chapels in different parts of London. This is partly due to the fact that there is no central body which looks after these grounds, and no lists of them or reliable information about them are to be had at Memorial Hall or the Baptist Union. Many of the chapels themselves have often changed hands, first belonging to one community and then another, so that the buildings and the graveyards (which are often in the hands of a few trustees) have not been maintained with the same interest as those of the Society of Friends, who attend to all matters connected with their meeting-houses and burial grounds at their "six weeks meeting."

It must be understood that this return only deals with burial grounds, and does not represent every place in London which has been used for interments; for there are, in every division of the metropolis, churches and chapels which never had graveyards attached to them, but which have vaults underneath them. Some of these were very extensively used, and it would be well to have a record of them as well as of the grounds. From the returns ordered by Parliament between the years 1830 and 1855, it appears that the burial grounds attached to the dissenting places of worship were not so generally overcrowded as some of the churchyards, or as all of the private grounds, in one of which the rate of interment was computed to be upwards of 2,300 bodies per acre annually.

The oldest of the churchyard gardens, and one of the most beautiful, is that of St. George's-in-the-East, which, with the adjoining graveyard of Cable Street Chapel, was laid out in 1875. The newest is St. Mary's, Woolwich, opened to the public on the last day of May, 1895. That it would eventually be well to treat all the metropolitan burial grounds in this manner was prophesied by the late Sir Edwin Chadwick in 1843, even while they were still being used for interments. He wrote—"the only observation I at present submit upon the space of ground now occupied (as burial grounds) is that it would serve hereafter advantageously to be kept open as public ground."

I have not referred many times in the following list to the work of the Metropolitan Public Gardens Association, but

may state here in a general way that of the 90 burial grounds which are now public recreation grounds, there is hardly one in the laying out of which the Association has not assisted, while many have been secured and laid out solely through its efforts, and negotiations have been carried on and offers made in connection with a large number of those which are not yet open to the public. The passing of the Disused Burial Grounds Act was also due in great measure to the Association, while most of the cases of infringement of that Act which have been brought to light, were traced by its officials.

In the following return the graveyards are divided under the heading of the municipal divisions of London, and although the City is not a part of the County I have added a list of the burial grounds within its area at the end of the return, without giving a full description of each.

I will close these introductory remarks by accentuating the "observation" of Sir Edwin Chadwick, coupled with a suggestion that the Council should instruct the Building Act Committee to pass no plans for the erection of new buildings until due enquiry has been made as to whether the site upon which it is desired to build, or any part of it, has ever been used for interments, under the special powers conferred upon the Council for this purpose by the Metropolitan Board of Works (Various Powers) Act, 1885, Part IV., Clause 56. In this way infringements of the Disused Burial Grounds Act, which have in the past been so frequent, will for the future become impossible.

ISABELLA M. HOLMES.

June 11th, 1895.

HAMPSTEAD.

1. *St. John's Churchyard.*—1½ acres in extent. It is full of tombstones, but very neatly kept, and although not handed over to any public authority, nor provided with seats, the gates are usually open. Very little is needed to make this a public recreation ground.

2. *Burial Ground in Holly Lane.*—1½ acres. This is still used for interments, and new graves are occasionally dug there.

It was consecrated in 1812. It is tidily kept, and the gates are open whenever the gardener is on the ground.

3. *Hampstead Cemetery.*—19½ acres. First used in 1876. Open daily. It is well kept, except the part nearest to Fortune Green, into which some of the rubbish with which the green is covered finds its way.

4. *The Tumulus, Parliament Hill Fields.*—Excavated in 1894 by the London County Council, and said to be an ancient British burial place of the early bronze period. Railed round for its protection.

N.B.—There are tumuli in Greenwich Park, and evidences of Roman cemeteries and other ancient burial places in several parts of London. I have not taken notice of them separately, but have included this particular one at Hampstead in this return, partly as a type of these older grounds, partly because its extent is clearly defined, and partly because the London County Council has interested itself in its preservation.

St. Marylebone.

5. *St. Marylebone Episcopal Chapel Ground,* High Street.—⅓ acre. This chapel was the parish church until 1816. The churchyard is full of tombstones, closed and fairly neat.

6. *St. Marylebone Burial Ground,* Paddington Street, north side.—¾ acre. A mortuary was built in it a few years ago. The ground was consecrated in 1772. It is closed to the public, but neatly kept and used as a garden for the inmates of the adjoining workhouse.

7. *St. Marylebone* (also called *St. George's*) *Burial Ground,* Paddington Street, south side.—2¼ acres. Consecrated in 1733, and very much used. Since 1886 it has been maintained as a public garden by the vestry, and is well kept.

8. *St. John's Wood Chapel Ground.*—An additional burial ground for the parish of Marylebone. 6 acres. The tombstones have not been moved, but the Marylebone Vestry maintains the ground as a public garden. It has a few seats in it, and is neatly kept. A part on the east side forms a private garden for a house situated in it. This was probably originally intended to be a part of the burial ground.

PADDINGTON.

9. *St. Mary's Churchyard.*—1 acre. The tombstones have not been moved, but the ground has been neatly laid out, and is kept open by the vestry.

10. *The Old Burial Ground*, Paddington.—3 acres. This adjoins St. Mary's churchyard, and was laid out and opened as a public garden by the vestry in 1885. It contains the site of an older church, dedicated to St. James.

KENSINGTON.

11. *St. Mary Abbots Churchyard.*—About 1¼ acres. The graveyard is smaller than it was 20 years ago because the present church is far larger than the original one, and recently a long porch or cloister has been added. It is neatly laid out, but closed to the public.

12. *Holy Trinity Churchyard*, Brompton.—3½ acres. There are public thoroughfares through this ground, but they are railed off, and the churchyard is closed and has a neglected appearance.

13. *Brompton Cemetery*, also called West London Cemetery and London and Westminster Cemetery.—38 acres. First used in 1840. By 1889 upwards of 155,000 bodies had been interred there. It is crowded with tombstones, open daily and neatly kept; but being in the midst of a thickly populated district I think it should be closed for interments.

14. *All Souls Cemetery*, Kensal Green, partly in Hammersmith.—69 acres. Open daily and neatly kept. This cemetery has been in use since 1833, and it is crowded with tombstones and contains catacombs and numerous vaults and mausoleums.

15. *Burial Ground of the Franciscan Convent of St. Elizabeth*, Portobello Road.—This is a triangular grass-plot, not above ¼ acre in size, in the garden behind the convent. It is surrounded by trees and neatly kept. It was sanctioned by the Home Secretary in 1862, and is only used for the interment of the nuns, of whom five have been buried here, the first in 1870 and the last in 1893.

HAMMERSMITH.

16. *St. Paul's Churchyard.*—1 acre. This is smaller than it used to be, the present church being larger than the old one, and a piece of the ground having been taken in 1884 to widen the road. It is neatly laid out and often open, but the vicar does not wish it to become a public recreation ground. It was consecrated in 1631, and frequently enlarged.

17. *St. Peter's Churchyard*, Black Lion Lane.—1,800 square yards. Closed and untidy.

18. *New West End Baptist Chapel Ground*, King Street.—¼ acre. This is north and south of the chapel, the northern part having been encroached upon. Closed and neatly kept.

19. *Wesleyan Chapel Burial Ground*, Waterloo Street.—The chapel has been supplanted by a Board school, and the playground is the site of the burial ground. It is tar-paved, has a few trees in it, and is about 500 square yards in size.

20. *Friends' Burial Ground*, near the Creek.—300 square yards. This is on the north side of the Friends' meeting-house, and is closed, but very neatly kept. There are a few flat tombstones, and burials took place at any rate as late as 1862.

21. *St. Mary's Roman Catholic Cemetery*, Kensal Green.—20 acres. This, and a part of the general cemetery, is in the Hammersmith Division. The first interment was in 1858, and it is now crowded with vaults, tombstones, &c. It is open daily and neatly kept.

22. *The Cemetery of the Benedictine Nunnery*, Fulham Palace Road.—This is a small burial ground in the garden. According to a report from the Home Office it is about 14 by 12 yards in extent. It was in use before 1829, but was closed for interments some years ago. I was unable to get permission to see this burial ground.

23. *The Cemetery of the Convent* (*Nazareth Home*), in Hammersmith Road.—This is at the extreme end of the garden, under the wall of Great Church Lane. It is not more than 12 yards by 9 yards, and is only used for the interment of the sisters. The last burial took place, I think, in 1890. This ground has been in use at any rate for upwards of 40 years, but unless there is any great mortality amongst the

sisters it would appear to be available for another 20 years or so. It is neatly kept, but being on the north side of a high wall very little grows there.

FULHAM.

24. *All Saints' Churchyard.*—2 acres or more. This is kept open during the summer months, and has seats in it, but the gravestones have not been moved, nor has the ground been handed over to any public authority for maintenance. It is neatly kept. No new graves are dug in it, but where the rights can be proved certain old vaults are still occasionally used.

25. *St. Mary's Churchyard,* Hammersmith Road.—Size ½ acre. This ground is closed, but fairly tidy. Several of the tombstones have been moved.

26. *St. John's Churchyard,* Walham Green.—½ acre. There are only a few tombstones on the north side of the church and none on the south side, and the ground is closed and appears neglected.

27.—*St. Thomas's Roman Catholic Churchyard,* Fulham.—2,600 square yards. This ground was closed by order in council in 1857, but only partially, for new graves are still dug in it. I saw one being prepared on March 12. It is crowded with tombstones, as thickly placed as possible, and is in the midst of a densely populated district of new streets. The gate is usually open during the daytime.

28. *Lillie Road Pest-field* (the orchard of Normand House).—The site of this orchard, then four acres in extent, was used extensively for burials at the time of the great plague. Lintaine Grove now occupies part of it, and a row of houses in Lillie Road. Only about ¾ acre is still unbuilt upon, at the corner of Tilton Street, and this is offered for sale at the present time. It would form an excellent playground if it could be secured for that purpose.

29. *Fulham Cemetery.*—12½ acres. First used in 1865. Open daily.

30. *Hammersmith Cemetery,* in Fulham Fields.—16½ acres. First used in 1869. Open daily.

CHELSEA.

31. *St. Luke's Churchyard* (the old church on the embankment).—¼ acre. This ground is closed and is very much neglected; even Sir Hans Sloane's monument is tumbling to pieces, and considering the quaintness and the historical interest of the church, the churchyard should be neatly laid out and kept in good order.

32. *St Luke's Churchyard* (the new church in Robert Street).—2¼ acres. This ground was consecrated in 1812, and contains vaults and catacombs. It was laid out as a public garden, and is maintained by the Chelsea Vestry. The paths are neatly kept, but greater care might be shown in the part behind the church.

33. *Old Burial Ground*, King's Road.—¾ acre. Given to the parish of Chelsea by Sir Hans Sloane, consecrated in 1736, and enlarged in 1790. A mortuary has been built in it. It is laid out as a garden for the use of the inmates of the adjoining workhouse.

34. *Chelsea Hospital Graveyard*, Queen's Road.—1⅓ acres. This ground was used for the interment of the pensioners. It is closed, but neatly kept.

35. *St. Mary's Roman Catholic Burial Ground*, Cadogan Terrace.—1½ acres. The adjoining chapel was consecrated in 1811. The ground is closed and full of tombstones, and used to be called All Souls' Burial Ground.

36. *Moravian Burial Ground*, Milman's Row.—In 1750 Count Zinzendorf bought two acres of land from Sir Hans Sloane, being part of the garden and stables of Beaufort House, for the Moravians. About one acre was set aside as a burial ground. The part actually used for interments is fenced in and closed. It is neatly kept, the tombstones being very small flat ones. It is divided into four parts, one being for male infants and single brothers, another for female infants and single sisters, another for married brothers and widowers, and the fourth part for married sisters and widows. It belongs to the congregation of the Moravian Church in Fetter Lane, E.C., and was closed by order in council about seven years ago. The spaces between the fence and the walls are untidy.

37. *Jewish Burial Ground,* Fulham Road.—½ acre. It belongs to the Western Synagogue, St. Alban's Place, S.W., and was first used in 1813. It is closed to the public except between eleven and four on Sundays. A few years ago some shops were built on a part of the ground, one body being removed. The ground was then closed for burials, except in a few reserved graves. It is full of upright tombstones and rank grass, with no paths; but the Chief Rabbi has promised me that it shall be improved and planted with shrubs, &c., for the sake of the patients in the adjoining Chelsea Hospital for Women, who look out upon it from the west and south windows.

ST. GEORGE'S, HANOVER SQUARE.

38. *St. George's Burial Ground,* Mount Street.—1¼ acres. Laid out as a public garden, and beautifully kept by the vestry. The ground dates from about 1730, but there are very few tombstones.

39. *St. George's Burial Ground,* Bayswater Road.—This is now being laid out by the vestry, the gravestones having been placed round the walls. The approaches to this ground are its chief drawback, and it is not visible from any public road. One entrance is through the chapel facing Hyde Park, and the other is in a mews. It is about 5 acres in extent.

WESTMINSTER (ST. MARGARET AND ST. JOHN).

40. *The Churchyard of Westminster Abbey.*—What remains of the extensive burial ground which once occupied this site is the piece of land on the north side of the Abbey, and the cloisters. (See *St. Margaret's.*)

41. *St. Margaret's Churchyard.*—This was laid out as a public garden, and forms one ground with the Abbey churchyard. It is well kept up by the burial board of the parish. There is an enclosure at the east end of the Abbey, which needs attention, and might be much improved. The size of the churchyard, with the ground used for interments which belongs to the Abbey, is about 2¼ acres.

42. *Christ Church Churchyard,* Victoria Street (also called St. Margaret's Burying Ground).—This church was a chapel of

ease to St. Margaret's. The adjoining graveyard has had a vicarage built in it. What remains is 7,000 square yards in size, closed, with flat tombstones and well-kept grass.

43. *St. John the Evangelist Churchyard*, Smith Square.—This churchyard used to extend, at the beginning of the century, for some distance on the south side of the church, but was thrown into the road. Now all that remains is a very small bare enclosure, not over ¼ acre in size, railed in round the church.

44. *Additional Ground for St. John's Parish*, Horseferry Road.—Walled in in 1627, and very much used, especially for the burial of soldiers. It is 1½ acres in size, and has been laid out as a public garden. It is neatly kept by the vestry, and much frequented.

45. *Vincent Square*.—8 acres. This is what remains of the Tothill Fields pest-field, much used at the time of the great plague, after which time 1,200 Scotch military prisoners, with their wives, were buried there. The pest-houses, erected in 1642, were not removed until this century. The Square is now the playground of Westminster, and some buildings have been erected in it. A stone-paved yard in Earl Street is said to be the site of the plague pits. This is about ¼ acre in size. It used to be Hartley's marble works, but is now Her Majesty's Stationery Office Waste Department.

46. *Millbank Penitentiary Burial Ground*.—432 square yards in size. In 1830–33 there were an average of 14 interments per annum, but at times it was more used. The site of this graveyard should be preserved when the space which used to be occupied by the prison is built upon, and it is probable that the London County Council has plans upon which it is marked.

St. Martin's-in-the-Fields.

47. *St. Martin's Churchyard*.—⅓ acre. This is stone-paved, has trees and seats in it supplied by the Metropolitan Public Gardens Association, and is maintained by the vestry. A large piece, called the Waterman's Churchyard, which was on the south side of the church, was swept away for public improvements in 1831, the bodies being removed to the vaults.

48. *Additional Ground in Drury Lane.*—Less than ¼ acre. Laid out as a public garden, and now maintained by the vestry. It is well kept, and contains some gymnastic apparatus for the use of the children.

St. James's, Westminster.

49. *St. James's Churchyard,* Piccadilly.—½ acre. This is a dreary ground, and might be made very attractive. The part where most burials took place is considerably raised above the rest. The part on the north side of the church is entirely paved with stones, amongst which are many tombstones. In the upper part tombstones form the walks, the walls, &c. One gate is often unlatched.

50. *St. James's Workhouse Ground,* Poland Street.—The workhouse was built upon a "common cemetery," where, at the time of the plague, many thousands of bodies were interred. A small part of it was kept as the workhouse burial ground, but this has now disappeared, and all that is left of the original ground used for interments is the garden or courtyard of the workhouse. It is a pleasant recreation ground for the inmates, and is well supplied with seats, being about ¼ acre in extent.

The Strand.

51. *St. Mary-le-Strand Churchyard.* — The church once stood in a "fair cemetery," most of which was thrown into the road 200 years ago. The remaining piece is at the west end of the church, about 200 square yards in size, which is closed and not well kept.

52. *Additional Ground, Russell Court, Catherine Street.*—430 square yards. It is probable that few grounds in London were more overcrowded with bodies than this one, which is entirely surrounded by the backs of small houses. When closed in 1853 it was in a very disgusting and unwholesome condition, and it continued to be most wretched until the Metropolitan Public Gardens Association asphalted it in 1886. It is maintained as a children's playground by the London County Council. This is the scene of "Tom-all-alone's" in "Bleak House." There are 6 gravestones against the wall.

53. *St. Clement Danes Churchyard.*—This is now ¼ acre in extent, having been curtailed when the Strand was made. It is supposed to be part of the original burial ground of the Danes in London. It is closed and not well kept. Considering its position, it might be planted with beds of flowers and made most attractive, but the mud from passing vehicles is a drawback.

54. *Additional Ground, Portugal Street.*—This was called the "Green Ground," and was crowded with bodies. A corner of King's College Hospital was built upon the ground. The remaining piece is nearly ½ acre in size, between the hospital and Portugal Street. It is now the entrance drive and a grass-plot. It is neatly kept, with some trees and seats in it, and is used solely by the hospital.

55. *St. Paul's Churchyard,* Covent Garden.—¾ acre. Given by the Earl of Bedford in 1631. It is closed and very neat, the tombstones forming a flat paved yard round the church, while the rest of the ground is turfed.

56. *St. Ann's Churchyard,* Soho.—½ acre. It is estimated that in this small ground and the vaults under the church 110,240 bodies were interred during 160 years. It was laid out by the Metropolitan Public Gardens Association in 1892, and is maintained as a recreation ground in very good order by the Strand District Board of Works.

57. *The Churchyard of the Chapel Royal* (*St. Mary's*), Savoy. —¼ acre. This ground was much used for the interment of soldiers. It belongs to Her Majesty the Queen, as Duchess of Lancaster, and was laid out as a public garden at the cost of the Queen, the Earl of Meath, and others. It is well maintained by the parish.

St. Giles-in-the-Fields.

58. *St. Giles's Churchyard.*—Nearly an acre. This ground being originally consecrated by a Roman Catholic, was much used by the poor Irish. It was enlarged in 1628, and at various subsequent dates, and was very much overcrowded, and as it occupies the site of an ancient ground attached to a leper hospital, it must contain century upon century and layer upon layer of the dead. It has been laid out as

a public garden, and is maintained by the St. Giles's District Board of Works. The brightest part of the ground is north of the church, and this is only opened at the discretion of the caretaker.

HOLBORN.

59. *Additional Ground for St. John's, Clerkenwell,* in Benjamin Street.—This land, which is nearly ¼ acre in extent, was sold for a burial ground by Mr. John Michell in 1724, and consecrated in 1775. It was laid out as a public garden ten years ago, and is jointly maintained and neatly kept up by the Holborn District Board of Works and the Clerkenwell Vestry.

I have always thought that it would be a valuable public improvement if the tumbledown buildings situated between this ground and Turnmill Street could be pulled down and their site thrown into the burial ground as an additional garden or a playground, so that the open space might extend to the road and a better entrance be made.

60. *Charterhouse Square.*—This garden is a part of the site of a burial ground dating back to 1349, when Sir Walter de Manny purchased from St. Bartholomew's Hospital 13 acres of land, known as the Spittle Croft, for the burial of those who died in the plague of that time. In 20 years 50,000 bodies were interred there. In 1371 the Carthusian Monastery was built upon it. The Pardon Churchyard was a space of three acres acquired a year earlier, to which the plague ground was added. This Pardon Churchyard survived longer, being used for suicides and executed people. Charterhouse Square is 1¼ acres.

61. *The old Charterhouse Graveyard.*—In 1828 to 1830, when the present Pensioners' Court and other buildings were erected, part of this ground was built upon; but part exists in the courtyard on each side of the Pensioners' Courts, being about ⅓ acre in extent, and this piece should always be preserved.

62. *The new Charterhouse Burial Ground.*—When the above ground was done away with, a smaller piece to the north was set aside for the interment of the pensioners. This remains still, and is very neatly kept. There are a few gravestones

on the wall and splendid fruit trees. It is about ¼ acre in extent.

CLERKENWELL.

63. *St. James's Churchyard.*—¾ acre. This ground was purchased in 1673, enlarged in 1677, and is now laid out as a public garden and maintained by the vestry.

64. *Additional Ground, Bowling Green Lane* (called St. James's middle ground).—This was leased by the parish, with the adjoining "Cherry Tree" public-house, in 1775 for 99 years. It is ¼ acre in size, situated at the corner of Rosoman Street and Bowling Green Lane. The London School Board secured it when the lease ran out, and it is now the playground of the Bowling Green Lane School. In these cases care should be taken that the Board does not enlarge the school on to that part of the playground which was a burial ground.

65. *The Burial Ground of St. James*, Pentonville Road.—This was formed as an additional ground for the Parish of St. James, Clerkenwell. It is nearly an acre in extent, full of tombstones, and very untidy, but the Clerkenwell Vestry has undertaken to convert it into a public garden.

66. *St. John's Churchyard.*—What exists of this is between the church and St. John Street Road, a narrow strip, about 320 square yards in extent, closed and paved with tiles and tombstones. The vaults are very crowded.

67. *Spa Fields Burial Ground*, Exmouth Street.—Originally a tea-garden, afterwards a burial ground, managed by a private individual. It is the property of the Marquis of Northampton, is about 1¾ acres in extent, and after being closed for interments it was used as a volunteer drill-ground. In 1885 the Metropolitan Public Gardens Association laid it out as a playground, and the London County Council maintains it. The revelations in connection with the disgraceful overcrowding of this ground, in which gravestones were moved about to give the appearance of more space, and newly-buried bodies and coffins were burned and treated with quicklime, were the commencement of the agitation which eventually resulted in the closing of the metropolitan graveyards and the provision of cemeteries further out of town.

St. Pancras.

68. *St. Pancras Burial Ground*, Pancras Road.

69. *St. Giles-in-the-Fields Burial Ground*, Pancras Road.—These two grounds now form one garden, about 6 acres in extent, maintained with much care for the use of the public by St. Pancras Vestry. St. Giles's ground dates from 1803, but the other is much older. In 1889 part of St. Pancras ground was acquired under a special Act by the Midland Railway Company. This part was, in 1791, assigned to the French *émigrés*, and many celebrated Frenchmen and Roman Catholics were buried there. Part of it has not actually been built upon, as the railway goes over it on arches. There are many high stacks of tombstones in the garden, and a "trophy" and a "dome" of headstones, numbering 496, which were taken from the part acquired by the railway.

70. *St. Martin's-in-the-Fields Burial Ground*, in Pratt Street.—1¾ acres. This was consecrated in 1805. It is now a well-kept public garden under the control of the St. Pancras Vestry. A part appears to have been appropriated as a private garden for the almshouses and as a site for a chapel and other buildings.

71. *St. James's Burial Ground*, Hampstead Road.—This belongs to the parish of St. James, Piccadilly. It was laid out as a public garden in 1887, and is maintained by the St. Pancras Vestry, a large slice at the east end having been taken off for public improvements. The remaining portion measures about 3 acres.

72. *St. Andrew's Burial Ground*, Gray's Inn Road.—1¼ acres. This ground belongs to the parish of St. Andrew, Holborn, adjoins the church of Holy Trinity, and is maintained as a public garden by the St. Pancras Vestry. It is well kept, except a railed-off piece south of the church, which is a sort of lumber-room.

73. *The Burial Ground of St. George's*, Bloomsbury.

74. *The Burial Ground of St. George-the-Martyr*, Bloomsbury.—These are out of Wakefield Street, Gray's Inn Road, and together form one public garden maintained by the St. Pancras Vestry and very well kept. A part of the latter is still closed, a private gentleman having a dissecting room in it. I

suppose his lease will not, however, be renewed. Each ground is 1¼ acres in extent.

75. *Whitfield's Tabernacle Burial Ground*, Tottenham Court Road.—Somewhat less than ½ acre. The history of this ground, about which there has been so much litigation, is well-known to the London County Council, by whom it was opened as a public garden in February, 1895. It is said that in 97 years upwards of 30,000 bodies were interred in this ground, and that in 1780 the mould for the ground was brought from the churchyard of St. Christopher-le-Stocks, then being made into a garden for the Bank of England, "by which the consecration fees were saved."

76. *Wesleyan Chapel Ground*, Liverpool Street, King's Cross.—An untidy little closed yard at the west end of the chapel containing two tombstones and much rubbish, and measuring about 225 square yards.

77. *St. James's Cemetery*, Highgate.—38 acres. First used in 1839. In 50 years 76,000 interments had taken place. It is in two portions and situated on a steep slope. Open daily.

ISLINGTON.

78. *St. Mary's Churchyard.*—1⅓ acres. This ground was enlarged in 1793, and was laid out as a public garden in 1885. It is maintained by the vicar and churchwardens.

79. *Additional Ground round the Chapel of Ease in Holloway Road.*—4 acres. This is also laid out as a public garden, and it is beautifully kept by the Islington Vestry.

80. *Burial Ground of St. John's Roman Catholic Church*, Duncan Row.—½ acre. A strip at the northern end of this ground is railed off with some tombstones in it, the remainder being tar-paved and used as a playground for the boys' Roman Catholic school.

81. *Islington Chapel Ground*, Church Street (also called Little Bunhill Fields).—The original chapel was built in 1788, and had a small graveyard. In 1817 the Rev. Evan Jones bought the garden of 5, Church Row, and added it to this graveyard, the whole ground being nearly 1 acre in extent. It is now in several divisions, part is a yard belonging to the General Post Office, and the other parts are let and sold as

builders' yards. About ½ acre is vacant, and would make a good playground. The ground is quite bare, all outward signs of a graveyard having long since gone.

82. *Maberley Chapel Ground*, Ball's Pond Road. — Now called Earlham Hall. The ground is about 270 square yards, between the chapel and the road. It is closed and bare, with four tombstones against the wall of the chapel, and painted with the wall.

83. *Jewish Burial Ground*, Ball's Pond.—1¼ acres. This belongs to the West London Synagogue, is very neatly kept, and is still in use. It is full of very large tombstones.

St. Luke's.

84. *St. Luke's Churchyard*, Old Street.—In two parts. Size of the whole ground, nearly 1¾ acres. The piece round the church is closed, and full of large altar tombs, ivy being planted most profusely. There is a great deal of rubbish in it. The part on the north side was laid out as a public garden in 1878, and is maintained by the vestry. It has been temporarily closed this year for new drainage and alterations.

85. *The Poor Ground*, Bath Street.—¼ acre. This was originally larger than it is now. It was consecrated in 1662 for the parish of St. Giles, Cripplegate, and called the pest-house ground. After 1732, when St. Luke's parish was formed, it was used by that parish. Now it is neatly laid out and used as a recreation ground by the patients of the St. Luke's Asylum. It is ¼ acre in extent.

86. *Wesleyan Chapel Ground*, City Road.—½ acre. The part in front of the chapel is neatly kept, but the part behind is closed and not so tidy. Wesley himself was buried in a vault here.

87. *Bunhill Fields*.—4 acres. This was originally two grounds, the southern part having been intended for burials in the great plague, but not being used was let by the Corporation to a Mr. John Tyndall, who carried it on as a private cemetery. Subsequently the northern part was added, and the whole ground extensively used for the interment of Dissenters, including John Bunyan, Daniel Defoe, and countless ministers. The Corporation maintain it as a public garden, but the tomb-

stones have not been moved, and only the gates at the eastern end are generally open.

88. *The Friends' Burial Ground*, Bunhill Row.—Acquired in 1661, many times added to, and chiefly used by the Friends of the Peel and Bull-and-Mouth divisions. In 1840 a school was built in it. The existing portion is about ½ acre in size, and is neatly kept as a private garden; but the remainder was used as the site for a Board school, a coffee palace, houses and shops, including the "Bunhill Fields Memorial Buildings," erected in 1881, when 5,000 bodies were dug up, treated with carbolic acid, and buried in a corner of the part which still exists.

89. *St. Bartholomew's Hospital Ground*, Seward Street.—⅓ acre. This was used for the interment of the unclaimed bodies. After being closed it was let as a carter's yard until it was laid out as a public playground by the Metropolitan Public Gardens Association in 1891. It is maintained by St. Luke's Vestry.

90. *Cripplegate Poor Ground*, Whitecross Street.—It was called the "upper churchyard" of St. Giles, and was first used in 1636. It was very much overcrowded, the fees being low. A part of the site is occupied by the church and mission house of St. Mary, Charterhouse, erected in 1864, and only a very small court-yard now exists between these buildings, with a large vault.

91. *The City of London (or Golden Lane) Burial Ground.*—1¼ acres. This was the site of a brewery, and set aside for burials in 1833. About one third of it is in the City. It is now divided. One part is in the occupation of Messrs. Sutton & Co., carriers, and is full of sheds and carts, and the southern part has the City mortuary and coroner's court on it. What is unbuilt upon is a neat, private yard between these two buildings. It was closed for burials in 1853.

SHOREDITCH.

92. *St. Leonard's Churchyard.*—1½ acres. Maintained as a public garden by the Shoreditch Burial Board, but only open from May 1st to October 31st. This ground, as well as numbers 95 and 96, might well be open all the year round. It is, I believe, partly in Bethnal Green.

93. *Old Burial Ground*, Hackney Road.—½ acre. This has an ancient watch-house in it, which was subsequently used as a cholera hospital. In 1892 the Metropolitan Public Gardens Association laid it out as a public playground, and it is maintained by the burial board.

94. *Holywell Mount Burial Ground.*—Behind St. James's Church, Curtain Road, which occupies the site of a theatre of Shakespeare's time. The ground is very old, and was much used at the time of plagues, and many actors were buried there. There is only about ⅓ acre left, the greater part having been used as the site for a parish room, and this is a timber-yard and an altogether unsightly place, approached from Holywell Row.

95. *St. Mary's Churchyard*, Haggerstone.—1⅓ acres. This is maintained by the Shoreditch Burial Board under the same regulations as the parish churchyard, but is rather a brighter garden. It was laid out by the Earl and Countess of Meath in 1882.

96. *St. John's Churchyard*, Hoxton.—1¼ acres. Also maintained by the Shoreditch Burial Board, and laid out by the Earl and Countess of Meath.

97. *Providence Chapel Burial Ground.*—On the site of this chapel the Shoreditch Tabernacle, Hackney Road, was built, and the site of the burial ground is a tar-paved court or passage on its south side, containing four gravestones. Although called Shoreditch Tabernacle, I believe it is in Bethnal Green.

98. *Baptist Chapel Ground*, Worship Street.—720 square yards. The site of this ground has not been actually built upon, but it is now unrecognisable, as it forms part of the yard used as the goods depôt of the London and North Western Railway, with stacks of bricks, pipes, &c., on it.

99. *Jewish Burial Ground*, Hoxton Street.—¼ acre. This belongs to the United Synagogue, and was used from 1700 till 1795. There is no grass, but many tombstones, and some one is sent four times a year to clear away the weeds, &c. It is not a tidy ground.

HACKNEY.

100. *St. John at Hackney Churchyard.*—6 acres. This includes an older ground, attached to the original church of St. Augustine, of which the tower still remains. Part of the churchyard is laid out as a public garden, and is neatly kept by the Hackney District Board of Works, but the newer part to the south of the church is still full of tombstones and rather untidy grass. The newest part of all, "the poor ground," which is at the extreme southern end, is laid out for the use of children.

101. *West Hackney Churchyard*, Stoke Newington Road.—Nearly 1½ acres. This was consecrated in 1824, and laid out as a public garden in 1885. It is maintained by the Hackney District Board of Works.

102. *St. Barnabas Churchyard*, Homerton.—¾ acre. This ground is not open, but a good deal of care is shown in its management. In 1884 the Easter offerings were devoted to its improvement, and many tombstones were then laid flat.

103. *St. John of Jerusalem Churchyard*, South Hackney.—About ¾ acre. This was consecrated in 1831. It is full of tombstones, and the grass is not well kept, but it is usually open for people to pass through it. It was closed for burials in 1868.

104. *Wells Street Burial Ground.*—This contains the site of the original South Hackney Church. It was laid out as a public garden in 1885, and is very neatly kept by the Hackney District Board of Works. Nearly ¾ acre.

105. *Independent Chapel Ground*, Mare Street (also called St. Thomas' Square Burial Ground).—⅔ acre. Laid out in 1888, and maintained by the Hackney District Board of Works, who paid 100*l.* for a passage to join this ground with No. 104, one caretaker managing both of them. It is very bright and neat. The ornamental shelter occupies the site of a previous building.

106. *Baptist Chapel Ground*, Mare Street.—About 500 square yards, at the back of the chapel. There are several tombstones tumbling about, and the ground is painfully untidy, apparently being used to store old furniture, wood, flower-pots, &c., in.

107. *New Gravel-pit Chapel Ground*, Chatham Place, attached to the Unitarian Church.—¾ acre. This is full of tombstones and fairly tidy. The gate is usually open, the chapel-keeper living behind the chapel and having a greenhouse and fowl-house, &c., in the ground.

108. *Retreat Place.*—A garden in front of 12 almshouses, founded in 1812 "for the widows of Dissenting ministers professing Calvinistic doctrines." Samuel Palmer, the founder, who died in 1833, and his wife, who died in 1836, are buried in the middle of the garden under a large altar tombstone.

109. *Jewish Burial Ground*, Grove Street.—2¼ acres. This belongs to the United Synagogue, and was purchased in 1788. It is closed and full of erect tombstones, and has some trees and flower-beds near the entrance.

110. *St. Mary's Churchyard*, Stoke Newington.—¾ acre. A very pretty ground round the old church, but not laid out or opened.

111. *Abney Congregational Chapel Ground*, Church Street, Stoke Newington.—Founded in 1662. This ground was closed for burials in 1854, and very soon afterwards schools and other buildings were erected in it. Only some narrow paved passages remain.

112. *Friends' Burial Ground*, Park Street, Stoke Newington, adjoining the meeting-house.—¾ acre. This was bought in 1827, and enlarged in 1849. It is still in use and neatly kept, but not open to the public.

113. *Abney Park Cemetery.*—32 acres. First used in 1840. Neatly kept and open daily, being chiefly used by Dissenters. It is crowded with tombstones. In a report upon a part of this ground in 1855 it was described as "a mass of corruption underneath," the soil being a "damp, blue clay."

Bethnal Green.

114. *St. Matthew's Churchyard.*—About 2 acres. This was consecrated in 1746, and was much overcrowded. A mortuary was built in it some years ago. There are vaults under the schools as well as the church. It is closed and untidy, but negotiations are on foot respecting its conversion into a garden.

115. *St. Peter's Churchyard*, Hackney Road.—¼ acre. This churchyard is maintained as a public garden by the vicar, who opens it during the summer months. There are not many tombstones.

116. *St. Bartholomew's Churchyard*, near Cambridge Road. —Nearly an acre. This was laid out by the Metropolitan Public Gardens Association in 1885, and is maintained by the London County Council. It is immensely appreciated and well kept, but I think the bare and untidy piece immediately round the church should be laid out and added to the garden.

117. *St. James-the-Less Churchyard*, Old Ford Road.—Over an acre. Closed and considerably below the church. It contains about 10 tombstones, and several cocks and hens live in it. It is half bare of grass, and on the day I visited it, April 26th, it was full of water, an unwholesome-looking swamp. The Metropolitan Public Gardens Association has offered to lay it out, but the vestry declines to maintain it.

118. *Victoria Park Cemetery.*—11 acres. This is maintained as a public garden by the London County Council, having been laid out in 1894 by the Metropolitan Public Gardens Association. It was formed in 1845, and used for 40 years. Before being laid out it was a most dreary, neglected-looking place; the soil is a heavy clay, and there used to be large wet lumps lying about all over the ground. At a burial in 1884 the clerk brought a handful of earth out of his pocket to throw upon the coffin. Now it is a bright, useful little park.

119. *Peel Grove Burial Ground* (also called North East London Cemetery, Cambridge Heath or Road Burial Ground and Kildy's Ground). According to a return in 1855 it was 4 acres in extent, but now there is hardly one acre. Half of this is in the occupation of J. Glover and Sons, dealers in building materials, and is full of wood, pipes, &c. There are some sheds in it. The other half is vacant, and has often been let for fairs, shows, &c. It is now to let, the agents being Messrs. C. C. and T. Moore, 144, Mile End Road, and would form a useful playground. It was a private ground, formed 100 years ago, and was very much crowded. The late Metropolitan Board of Works saved the existing part from being built over.

120. *Gibraltar Walk Burial Ground*, Bethnal Green Road.—Another private ground, formed about 100 years ago. It belongs to a lady who lives in the house which opens into it, and who has let pieces of it as yards for the shops and houses round. It is full of shrubs, trees, and weeds, and covered with rubbish, and is about ¾ acre in size. At present it is very unwholesome, but it might be made into a useful recreation ground.

121. *Jewish Burial Ground*, Brady Street.—This existed 100 years ago, and belongs to the United Synagogue. I believe it is about 4 acres. It is crowded with upright gravestones, and there are no properly made paths, but it is covered with neglected grass. Part of it is higher than the rest, the soil having been raised and the ground used a second time. This was the "strangers'" portion.

See also Nos. 92 and 97.

WHITECHAPEL.

122. *St. Mary's Churchyard.*—¾ acre. This is a very old churchyard, and was much overcrowded. It is maintained by the rector as a garden, but a charge of 1*d.* is made for entrance. It is neatly laid out.

123. *Additional Ground, Whitechapel Road*, entrance in St. Mary's Street.—This was called the Workhouse Burial Ground, the workhouse having been built in 1768 upon a former graveyard, and this piece to the north of it having then been set aside for interments and consecrated in 1796. The workhouse site was built upon some years ago, and the burial ground became the playground of the Davenant Schools, one of which, the one facing St. Mary's Street, was built in it. In the order for closing it, dated 9th of May, 1853, it is called the Whitechapel Workhouse and Schools Ground. It is difficult to say exactly how far east the burial ground extended, but from the Ordnance Map it would appear that the recent addition to the school in Whitechapel Road has been built in the burial ground, and therefore I drew the attention of the Council to it a few weeks ago. In 1833 the size is given as 2,776 square yards, but it is stated that in 1832, 196 cholera cases were interred in an adjoining piece of ground.

This is probably what is now used as a stoneyard, with carts in it.

124. *Christ Church Churchyard*, Spitalfields.—1¾ acres. Laid out as a public garden by the Metropolitan Public Gardens Association in 1892, the Association having undertaken to maintain it for 5 years.

125. *St. Peter ad Vincula Churchyard*, in the Tower.—This, with the vaults under the church, was used for the interment of distinguished prisoners. It is a part of the great courtyard, and is about 525 square yards in extent.

126. *Holy Trinity Churchyard*, Minories.—A burial ground dating back to 1348. It has been added to the roadway of Church Street, some posts showing its boundaries. It was about 302 square yards in extent.

127. *Aldgate Burial Ground*, Cartwright Street.—This belongs to the parish of St. Botolph, Aldgate, and was consecrated in 1615. At the beginning of this century it was covered with small houses, the Weigh House School being built on it in 1846. The rookery was cleared by the Metropolitan Board of Works, and Darby Street was made, gravestones and remains being then discovered. The Metropolitan Public Gardens Association informed the board of the former existence of a burial ground, with the result that the arrangement of the blocks of new artisans' dwellings was so altered that what remained of the burial ground was not built upon, but was made into an asphalted playground, about ⅛ acre in extent, for the children of the adjoining block of tenements.

128. *Friends' Burial Ground*, Baker's Row.—Very nearly an acre. This belonged to the Friends of the Devonshire House division, but was not used for long. It is leased by the society to the Whitechapel District Board of Works, who maintain it as a public recreation ground. It is well laid out and well kept, being chiefly used by children.

129. *Mile End New Town Burial Ground*, Hanbury Street.—This adjoined the chapel, and extended from Hanbury Street to Old Montague Street. A school and other buildings have been erected in it, and all that is left is a paved yard, about 250 square yards in size, on the west side of the chapel.

130. *Sheen's Burial Ground*, Church Lane.—A private ground, immensely used and disgustingly crowded. It seems to have been at one time used by the congregation of the Baptists in Little Alie Street, and was then called "Mr. Brittain's burial ground." If so it existed in 1763. After being closed for burials it was used as a cooperage, and now it is Messrs. Fairclough's yard, and full of carts and sheds, &c. A new stable was built in 1894, but the London County Council declined to prevent its erection. The size of the ground is about ½ acre, and the deserted chapel with adjoining plots of land are now for sale, but no further buildings should be allowed here.

131. *The London Hospital Burial Ground.*—In a plan of 1849 the whole of the southern part of the enclosure is marked as a burial ground, which would be 1½ acres in extent. It was closed on November 25th, 1853, but at the hospital it is stated that bodies were interred there after 1859, though not after 1864. Since then the medical school, the chaplain's house and the nurses' home have been built in it. There is now a scheme on hand to enlarge the nurses' home, which should be put a stop to. The remaining part of the ground is used as a garden and tennis-lawn for the nurses, and is neatly kept. The house governor thinks that the drying ground on the east side may have been used for interments, but of this I have no direct evidence.

St. George's-in-the-East.

132. *St. George's Churchyard.*—Dates from about 1730. The wall between this ground and the next one was taken down in 1875, and the two grounds were laid out as a public garden. They are maintained by the vestry, and, although in a densely crowded district, are beautifully kept. The size of the whole garden, consisting of the two graveyards, is about 3 acres.

133. *Wesleyan Chapel Ground*, Cable Street. This forms one garden with the above.

134. *New Road Congregational Chapel Yard*, Cannon Street Road, between Lower and Upper Chapman Streets.—This was a much-used burial ground, part of which has been

covered with sheds and houses. What is left is about ⅕ acre in extent. The chapel was bought in 1832, and became Trinity Episcopal Chapel, and was subsequently removed and its site used for the new building of Raine's School. The burial ground is in three parts, viz., the playground of the school, a cooper's yard belonging to Messrs. Hasted and Sons, and a carter's yard of Messrs. Seaward Brothers. This ground was used for the burial of the Lascars who lived in neighbouring courts.

135. *Danish Burial Ground*, Wellclose Square.—Mentioned by Malcolm in 1803. The Danish (or Mariners') Church has been supplanted by the schools of St. Paul's, London Docks, and the whole of the garden is neatly laid out, and used as a private ground for the people who look after the schools, the crèche, &c. Northoouk in 1773 also mentions the burial ground, many seamen having been interred there. There are no tombstones now, and it is possible that only an enclosure round the church was used, like the railed-in enclosure in Prince's Square, for so it appears in Horwood's plan (1807).

136. *Swedish Burial Ground*, Prince's Square.—Round the Elenora Church, over ½ acre in size. It is very neatly laid out and well kept, and contains many tombstones, Swedenborg himself being buried under the church. In this ground the inner enclosure referred to above still exists, the outer one having fewer graves in it.

137. *Ebenezer Chapel Burial Ground*, St. George's Street.—This was described in 1839 as being very much overcrowded. The chapel has been used as a school, but is now deserted, the small yard on the south side of it is used as a timber yard and closed. About 220 square yards.

138. *Congregational Chapel Ground*, Old Gravel Lane.—140 square yards. Closed, bare and untidy, with two gravestones against the wall.

139. *Baptist Burial Ground*, Broad Street, Wapping.—Mentioned by Maitland in 1756, and shown on Rocque's plan. The chapel has gone, but part of the adjoining yard exists as a small yard belonging to a milkman. Before he bought it it was the parish stoneyard. It is about 200 square yards in size. I have no direct proof, but little doubt, that this is a burial ground. Excavation would prove it one way or the other.

140. *Roman Catholic Burial Ground*, Commercial Road.—The tombstones are flat and the ground is used as a private garden for the priests. I was not allowed to go in it. It is about ½ acre in extent.

LIMEHOUSE.

141. *St. Ann's Churchyard.*—3 acres. Consecrated 1730, and since enlarged, but in 1800 a piece was cut off for Commercial Road, the bodies being removed south of the church. Laid out as a public garden by the Metropolitan Public Gardens Association in 1887, and now maintained by the London County Council. It is neatly kept, except the private passage to the mortuary, which is full of rubbish.

142. *St. Paul's Churchyard*, Shadwell.—¾ acre. Consecrated in 1671, but used before that as a pest-field for Stepney. Laid out by the Metropolitan Public Gardens Association in 1886, and now maintained and kept in good order by the London County Council. There are vaults under the adjoining school.

143. *St. James's Churchyard*, Ratcliff.—Nearly 1 acre. Laid out as a public garden by the Metropolitan Public Gardens Association in 1891, and maintained by the vicar. It is to be hoped that the upkeep of the garden may be permanently secured. At present it may be at any time closed.

144. *St. John's Churchyard*, Wapping.—600 square yards. Consecrated in 1617. This ground used to be very low and full of water. It is closed and fairly tidy, having many large altar tombs in it.

145. *Additional Ground opposite St. John's Church.*—Rather over ½ acre. This was one of the Stepney pest-fields. It is closed, but tidy. There are quantities of tombstones in this ground, many of which seem to be falling to pieces, and an unusual number of trees and flowering shrubs. I fancy that this ground and the churchyard were once all in one, the size of the whole being given in 1843 as over 1¼ acres.

146. *Friends' Burial Ground*, Brook Street, Ratcliff.—800 square yards. This is approached through the house on the south side of the meeting-house. It was acquired by the Society of Friends in 1666 or 1667, the land being originally

copyhold, but enfranchised in 1734 for 21*l.* It is neatly kept, and has four small upright stones.

147. *Brunswick Wesleyan Chapel Ground*, Three Colt Lane. —Approached by a passage at the back of the chapel. It is about 450 square yards in size, and is used as a private garden. There are vaults under the chapel and three tombstones. It is said that about 1,000 bodies were buried here, the last interment taking place in 1849.

Mile End Old Town.

148. *St. Dunstan's Churchyard*, Stepney.—About 6 acres, or rather more. At the time of the great plague about 150 bodies were interred here daily, and several extra grounds were provided for the parish. It was laid out as a public garden in 1887 by the Metropolitan Public Gardens Association. It is a most useful and shady ground, and is very neatly kept by the London County Council.

149. *Stepney Meeting House Burial Ground*, White Horse Street (also called the Almshouse Ground and Ratcliff Workhouse Ground).—There are many tombstones and the ground is fairly tidy. The gate is generally open, as the entrance to the almshouses is through it. Size ½ acre.

150. *Holy Trinity Churchyard*, Tredegar Square.—¾ acre. Laid out by the Metropolitan Public Gardens Association in 1887, and maintained by the London County Council. The gravestones have not been moved, and some of the graves are still occasionally used, though no new ones are dug.

151. *Wycliffe Chapel Burial Ground*, Philpott Street, Stepney.—¾ acre. This dates from 1831, and is behind the chapel and the Scotch church. It is full of tombstones, closed and untidy. Chadwick divides it into a part belonging to the chapel and a larger part belonging to the Scotch church, but it appears to be all one now, and is in the hands of the elders of Wycliffe Chapel.

152. *Globe Road Chapel Burial Ground*, also called Mile End Cemetery.—The chapel is now Gordon Hall, and belongs to Dr. Stevenson of the Children's Homes. The burial ground is in private hands, the agents being Messrs. Dixon of Bethnal Green Road. This ground was very much overcrowded, and

there were vaults under the chapel, the schools and the sexton's house, but all the part south of the chapel was taken by the Great Eastern Railway Company. The existing piece is about 670 square yards in extent, is closed and most untidy, quantities of rubbish lying about amongst the tombstones. The entrance is through as high a gate as any I know.

153. *East London Cemetery*, Shandy Street, also called the Beaumont Burial Ground.—2¼ acres. This was much crowded. It was laid out as a playground by the Metropolitan Public Gardens Association in 1885, and is maintained by the London County Council.

154. *Burial Ground of the Bancroft Almshouses*, Mile End Road.—The People's Palace is on the site of the almshouses, and part of the burial ground has been merged into the roadway on the east side of the palace. St. Benet's Church, Hall and Vicarage were built in this ground, the church being consecrated in 1872. Three pieces still exist, in all less than ½ acre; one is the vicarage garden, another is open to the road, and the northern point is closed and roofed over, forming a little yard where flag-staffs, &c., are stored. The open part is also a store-yard, having heaps of stones in it, besides much rubbish. There are at least four gravestones against the wall; there may be others behind the stones.

155. *Stepney Pest-field.* — Many acres to the south of the London Hospital were used for interments at the time of the plague, and the Brewers' Garden, and the space by St. Philip's Church are, according to some authorities, part of the site originally called Stepney Mount. At the Home Office it is believed that there have been no burials in the ground round St. Philip's, nor have there since it was St. Philip's churchyard; but I think there were long before the first St. Philip's Church or the Brewers' Almshouses existed. The Brewers' Garden is open to the public at a charge of *1d.*

156. *Jewish Burial Ground*, 70, Bancroft Road.—About 1,650 square yards. This ground belongs to the Maiden Lane Synagogue, and is crowded with upright gravestones. The grass is neglected-looking and there are no proper paths, only a sort of narrow sheep-track between the graves. Burials still take place in the vaults, and I was informed that there was room for about four more graves. It is in a densely populated district.

157. *Jewish Burial Ground*, Alderney Road.—1 acre. Formed in 1700, enlarged in 1733. Belongs to the United Synagogue. The tombstones are upright, and they are not so thick as in most of the Jewish grounds, while the grass is kept more neatly.

158. *Jewish Burial Ground*, Mile End Road.—This ground is nearly ¾ acre in extent, and is at the back of the Beth Holim Hospital. It belongs to the Spanish and Portuguese Jews, the tombstones are flat, there are several trees and the ground is very neatly kept. Part of the graveyard (where it is said that there have been no interments) has some seats in it, and is used by the patients of the hospital as a garden.

159. *Jewish Cemetery*, Mile End Road.—4¾ acres. This belongs to the Spanish and Portuguese Jews, and is still in use. The gravestones are flat ones and low altar tombs, and the ground is neatly kept, although very bare of trees or shrubs. It is closed to the public, as all the Jewish grounds are, but, with the exception of the one in Fulham Road, they can be seen upon application to the resident caretaker.

POPLAR.

160. *All Saints' Churchyard.*—Size, with that part which was used for the burial of cholera victims, on the other side of the road, opposite the west door of the church, 4 acres. The northern part of the churchyard was laid out by the Metropolitan Public Gardens Association in 1893, the rector having undertaken to maintain it for a few years. It is much appreciated and well kept.

161. *St. Matthias's Churchyard.*—This church was the chapel of the East India Dock Company, and is sometimes called Poplar Chapel. 1¼ acres. It is in the middle of the Poplar Recreation Ground, closed and fairly tidy. There are many tombstones.

162. *St. Mary's Churchyard*, Bow.—2,716 square yards. This is in two portions, the eastern one is closed, but the western one has been laid out by the Metropolitan Public Gardens Association and provided with seats, the rector maintaining it.

163. *St. Mary's Churchyard*, Bromley-by-Bow, or Bromley St. Leonard.—This churchyard is 1¼ acres in size and is

closed, but very neatly kept up by the parish, and has some tombstones of artistic value in it. Its opening as a public garden is under consideration.

164. *Baptist Chapel Ground*, Bow.—⅓ acre. Part of this ground is railed off as a private garden, the rest is very untidy and is used as a thoroughfare by the school children. There are several tombstones, some of which have been put against the walls.

165. *Trinity Congregational Chapel Ground*, East India Dock Road.—⅓ acre. This was laid out in 1888 as a public garden, the minister of the chapel maintaining it. On his removal from the district it was closed and has not been re-opened, which is a matter for regret.

166. *Roman Catholic Ground*, Wade's Place.—1,300 square yards. This belonged to St. Mary's Roman Catholic Church in Finsbury Circus, Moorfields, and was chiefly used for the poor Irish. It was a very damp, unwholesome ground. It is now used as a playground for the adjoining Roman Catholic school.

167. *City of London and Tower Hamlets Cemetery* (partly in Mile End).—33 acres. First used in 1841. By 1889, 247,000 bodies had been interred there, many being buried in common graves. It is still in use and open daily, a regular ocean of tombstones, many of which are lying about, apparently uncared for and unclaimed; in fact most of the graves, except those at the edges of the walks, look utterly neglected, and parts of the ground are very untidy. I think it should be closed for interments, as it is situated in so densely populated a district.

WANDSWORTH.

168. *All Saints' Churchyard*, High Street.—¼ acre. This is closed, and is much more tidy at the eastern end than the western end.

169. *East Hill Burial Ground*, Wandsworth Road.—½ acre. This was consecrated in 1680, and many French Huguenot refugees were buried in it. It is closed and fairly tidy.

170. *Garratt Lane Cemetery*, South Street, Wandsworth.—1¾ acres. This was consecrated in 1808. It is closed to the

public, and closed for interments with the exception of widows, widowers, and parents of deceased persons already interred there. It is maintained by the Wandsworth Burial Board.

171. *Friends' Burial Ground*, High Street, Wandsworth.—400 square yards. This is attached to the meeting-house, is closed and very neatly kept. There are a few upright tombstones.

172. *Baptist Burial Ground*, North Street, Wandsworth.—An untidy little closed yard with no tombstones in it and neglected grass. The chapel now belongs to the Salvation Army. I doubt if it was much used for burials, but at any rate there was one interment in 1854. It is about the same size as the Friends' ground.

173. *Independent Burial Ground*, Wandsworth.—This is now a small tar-paved yard adjoining Memorial Hall, which was built on the site of an old chapel or school-house. There are a few trees.

174. *St. Mary's Churchyard*, Putney.—½ acre. Closed and neatly kept.

175. *Putney Burial Ground*, Upper Richmond Road.—1 acre. This was a gift to the parish from the Rev. R. Pettiwand, and consecrated in 1763. It was laid out in 1886, but the tombstones were not moved, and many of them are dilapidated brick altar tombs. It is maintained for the public by the Putney Burial Board, but is not an attractive garden.

176. *St. Nicholas's Churchyard*, Lower Tooting.—2 acres. This is still in use. It is open daily, and kept in good order.

177. *Lower Tooting Chapel Ground.*—231 square yards behind the chapel (Congregational in High Street) and about 30 square yards in front. Some tombstones. Chapel dates from 1688.

178. *St. Leonard's Churchyard*, Streatham.—1¼ acres. The present church dates from 1831, but the churchyard is at least 100 years older. It is closed for burials, and well planted with flowers, grass, and trees. The gates are sometimes open, but not always.

179. *St. Paul's Churchyard*, Clapham, in the Wandsworth Road.—1½ acres. This is closed, and very full of tombstones. It is maintained by the Clapham Burial Board, but is in a rather jungly condition.

180. *Union Chapel Ground*, Streatham Hill.—About 500 square yards. This is a neat little garden between the chapel and the schools, both of which have been rebuilt, the schools in 1878. There is a row of tombstones against the walls. It is generally closed.

181. *Wandsworth Cemetery.*—12 acres. First used in 1878. Open daily.

182. *Lambeth Cemetery*, Tooting Graveney.—41 acres. First used in 1854. Open daily.

183. *Putney Cemetery.*—3 acres. First used in 1855. This is an encroachment on a common.

Battersea.

184. *St. Mary's Churchyard.*—¾ acre. Closed. The laying out of this ground is under consideration.

185. *St. George's Churchyard*, Battersea Park Road.—¾ acre. This is closed, and in a very neglected condition. There are not many gravestones. It would form a useful garden if laid out.

186. *Battersea Cemetery*, Bolingbroke Grove.—8½ acres. First used in 1860. Open daily. I believe this ground is now so full that it should not be used any longer.

Lambeth.

187. *St. Mary's Churchyard.*—½ acre. A very old ground, enlarged in 1623 and 1820. It is very neatly laid out, and the gates are left open, though there are no seats in it.

188. *Additional Ground in High Street* (also called Paradise Row Burial Ground).—1½ acres. Given to the parish by Archbishop Tenison, and consecrated in 1705. It was laid out in 1884 by the Lambeth Vestry, who maintain it efficiently.

189. *St. John's Churchyard*, Waterloo Bridge Road.—An acre in size. This was laid out as a garden and playground in 1877, and is well kept up by the Lambeth Vestry.

190. *St. Mark's Churchyard*, Kennington.—1¾ acres. This is closed and full of tombstones, but neatly kept.

191. *Regent Street Baptist Chapel Ground*, Kennington Road.—About 100 square yards. A little ground at the back of the chapel, with a few tombstones and one great vault in it.

192. *Esher Street Congregational Chapel Ground*, Upper Kennington Lane.—About 480 square yards, closed and very untidy.

193. *St. Matthew's Churchyard*, Brixton.—2 acres. This dates from 1824. It is closed, but neatly kept.

194. *Denmark Row Chapel Ground*, Coldharbour Lane.—This has been partly built upon, and there is now only a small yard behind the chapel.

195. *Stockwell Green Congregational Chapel Ground.*—¼ acre, or rather more. This is behind the chapel, and is as typical a specimen of a neglected graveyard as any I know. The graves are falling in, there is dirty rubbish of all kinds lying about, with iron building materials, a broken top of a lamp-post, quantities of paper, &c.

196. *St. Luke's Churchyard*, Norwood.—1 acre. This dates from 1825. It is tidily kept, except the part near the station. The gate is generally open. The gravestones are *in situ*.

197. *Congregational Chapel Ground*, Chapel Road, Lower Norwood.—About ⅓ acre behind the chapel. It is closed, and has grass and a few tombstones in it.

198. *Norwood Cemetery.*—40 acres. First used in 1838. Open daily, and fairly well kept. It is crowded with tombstones, and it includes a Greek cemetery and a burial ground belonging to the parish of St. Mary-at-Hill, each about 550 square yards in size.

CAMBERWELL.

199. *St. Giles's Churchyard.*—3¼ acres. Enlarged in 1717, 1803, and 1825. Closed, full of tombstones, and not well kept. I think the part north of the church has not been used for burials.

200. *St. George's Churchyard*, Well Street, Camberwell.—The church was consecrated in 1824, the ground being given by Mr. John Rolls. The churchyard measures about an acre, and was laid out in 1886 by the Metropolitan Public Gardens Association. It is maintained by the vestry. A mortuary has been built in it.

201. *Dulwich Burial Ground*, Court Lane, the graveyard of God's Gift College.—Size 1½ roods. This ground dates from about 1700. It is closed and very neatly kept. There are

several large altar tombs in it, and it is a most rural and picturesque spot.

202. *Wesleyan Chapel Ground*, Stafford Street, Peckham.—336 square yards. The chapel is now a school, the burial ground being the playground, a paved yard.

203. *Friends' Burial Ground*, Peckham Rye.—About 470 square yards. This ground was purchased in 1821, it is behind the meeting-house in Hanover Street, has some small flat gravestones in it, and is closed. It is most beautifully kept, with neatly mown grass and a border of flowers.

204. *Camberwell Cemetery*, Forest Hill Road.—29½ acres. First used in 1856. Open daily.

205. *Nunhead Cemetery* (All Saints').—50 acres. First used in 1840.

NEWINGTON.

206. *St. Mary's Churchyard.*—1¼ acres. This was enlarged in 1757 and 1834, and is now maintained as a public garden by the burial board, the freehold being vested in the rector. It is well laid out.

207. *St. Peter's Churchyard*, Walworth.—1¼ acres. This is also maintained as a public garden by the Newington Burial Board, having been laid out by the Metropolitan Public Gardens Association at the sole cost of the Goldsmiths' Company, and opened in May, 1895.

208. *Sutherland Congregational Chapel Ground*, Walworth.—This is close to St. Peter's, about 300 square yards in size, and closed. It has been somewhat encroached on by the school, which was enlarged in 1889. A few tombstones exist in the passage on the north side of the chapel and in the ground at the back. It is fairly tidy.

209. *York Street Chapel Ground*, Walworth.—About 700 square yards at the rear of the chapel, and not visible from the street. It is closed and full of tombstones.

210. *East Street Baptist Chapel Ground*, Walworth.—About 400 square yards, with one tombstone in it. It is closed and very untidy.

211. *St. John's Episcopal Chapel Ground*, Walworth.—In 1843 it was estimated at 6,400 square yards. The chapel is in Penrose Street, and is now the workshop of a scenic artist, the

front wall having been heightened for the purpose of advertising the *South London Press*. The burial ground is approached from Occupation Road, Manor Place, the railway line going across it on arches, and it is now the vestry depot for carts, manure, gravel, &c., &c. An adjoining plot is the site for the baths and washhouses. This ground needs to be carefully watched, as it is in danger of being encroached upon, and new bays for dust and other erections of the sort are often built in it.

212. *New Bunhill Fields*, Deverell Street, New Kent Road (also called Hoole and Martin's).—¾ acre. This was a private speculation, and was most indecently crowded. Between 1820 and 1838, 10,000 bodies were buried here, the vault under the chapel containing 1,800 coffins. Burials used to take place here "on lease," *i.e.*, 1*l.* would be paid for a coffin to be deposited for six months, after which time no inquiries were supposed to be made. The ground was closed in 1853, and it then became a timber-yard, the chapel being used as a saw-mill. The chapel now belongs to the Salvation Army, but the burial ground is still "Deverell's timber-yard," and is covered with high stacks of timber. There are many sheds in it, and iron bars, &c. The only unoccupied part is a strip in the centre of the passage up to the chapel door. At the further end of the ground is the yard of Messrs. J. and B. Groves, the London Sawing and Planing Mills, but I am not sure that this was a part of the land used for interments.

St. George-the-Martyr.

213. *St. George's Churchyard*, Borough.—This is about an acre in size, and is maintained as a public garden by the rector and churchwardens, having been laid out in 1882. It is much used.

214. *St. George's Recreation Ground*, Tabard Street (the Lock burial ground).—Rather over ¼ acre. This was originally the burial ground of the Lock Hospital, which was pulled down in 1809, a portion of the site of the hospital and ground having been before then consecrated as a parish burial ground. It was chiefly used for pauper burials, and was crammed with bodies. According to another authority it was consecrated in

1711, and called St. Andrew's Ground. It is now a neat public garden, laid out by the vestry in 1887, and in the possession of the rector and churchwardens of St. George's.

215. *Chapel Graveyard*, Collier's Rents, Long Lane.—This is about 620 square yards in extent, and is on the north side of an old Baptist chapel, which now belongs to the Congregational Union. The ground dates from before 1729, and is closed. There are a few tombstones and grass, but it is not very well kept.

St. Saviour's, Southwark.

216. *St. Saviour's Churchyard.*—This ancient ground has been often enlarged and curtailed, and at times was used as a market-place. What now exists is about ½ acre on the south side of the church, which is at present under restoration, the churchyard being closed and full of building materials.

217. *Additional Ground for St. Saviour's*, called the College Yard or St. Saviour's Almshouse Burial Ground, Park Street. —This existed before 1732. Size ¼ acre. The London, Brighton, and South Coast Railway goes over it on arches, and it is now the storeyard of Messrs. Stone and Humphries, builders. Most of it is roofed in, but it is not actually covered with buildings.

218. *Additional Ground for St. Saviour's*, called the Cross Bones, Redcross Street.—This was made, at least 250 years ago, "far from the parish church," for the interment of the low women who frequented the neighbourhood. It was subsequently used as the pauper ground, and was crowded to excess. Nevertheless, two schools were built in it. The remaining piece is about 1,300 square yards. It has frequently been offered for sale as a building site, and has formed the subject for much litigation. There is a board up in it at the present time, while it is made a partial use of by being let for fairs, swings, &c.

219. *Christ Church Churchyard*, Blackfriars Bridge Road.—1½ acres. This dates from about 1737, and has been enlarged. An infant school was built in it. It is closed, and not laid out.

220. *Deadman's Place Burial Ground.* Deadman's Place is now called Park Street.—This ground was originally used

for the interment of large numbers of victims to the plague. Then it became the graveyard of an adjoining Independent chapel, and was extensively used for the interment of ministers, being a sort of Bunhill Fields for South London. Now it is merely one of the yards over which trucks run on rails, in the middle of the large brewery belonging to Messrs. Barclay and Perkins, about ½ acre in extent. It existed as a burial ground in 1839, but not, I believe, in 1843.

221. *Baptist Burial Ground*, Bandy Leg Walk (subsequently called Guildford Street).—There was such a ground in 1721. In 1807 there existed the St. Saviour's Workhouse, with a burial ground on the east side of it which, from its position, may have coincided with the Baptists' ground. The workhouse in time was supplanted by Winchester House, the palace of the Bishops of Winchester when South London was in their diocese. Then it became a hat manufactory, the burial ground remaining as a garden situated between the building and Southwark Bridge Road. Lastly the site was taken by the late Metropolitan Board of Works for the Central Fire Brigade Station, and what is now left of the burial ground is a garden or courtyard, about 1,000 square yards in size, between the new buildings facing the road and the old house behind them. It is entered through the large archway.

St. Olave's.

222. *St. Olave's Churchyard*, Tooley Street.—A stone-paved yard, 634 square yards in extent, between the church and the river.

223. *Additional Ground to St. Olave's and to St. John's*, Horselydown, near St. John's Church.—About ½ acre, with a few tombstones in it. This was laid out in 1888, being chiefly asphalted, and is maintained as a recreation ground by the Board of Works for St. Olave's District. It is well used and neatly kept.

224. *St. John's Churchyard*, Horselydown.—Nearly 2 acres. Laid out as a public garden in 1882, and maintained by the St. Olave's Board.

225. *St. Thomas's Churchyard.*—This does not adjoin the church, but is behind the houses opposite. Size about 78;

square yards. It belongs to St. Thomas's Hospital, and is used as a private garden by a house in St. Thomas's Street.

226. *St. Thomas's Hospital Burial Ground,* St. Thomas's Street.—Part of this has been covered by St. Olave's Rectory and Messrs. Bevington's leather warehouse. The remaining piece measures about 1,770 square yards, and is an asphalted tennis-court and garden for the students of Guy's Hospital, the building in it being the treasurer's stables. It belongs to St. Thomas's Hospital, and is leased to Guy's.

227. *Butler's Burial Ground,* Horselydown.—(Called by Chadwick St. John's private ground, Borough.) This was made about 1822, the entrance being in Coxon's (late Butler's) Place, and was 1,440 square yards in size. It was not consecrated, and the undertaker who owned it used to officiate at burials in a surplice, charging rather a smaller fee than was charged in the churchyard, and hence it was much used. It is now Zurhorst's cooperage, and is full of barrels. A small piece, which I believe was a part of the burial ground, is a yard belonging to a builder named Field. There were vaults running under four dwelling-houses. These still exist, and are under the houses next to the entrance to Mr. Field's yard.

Bermondsey.

228. *St. Mary Magdalene's Churchyard.*—Rather over 1½ acres. This was enlarged in 1783 and 1810, and contains the remains of an ancient cemetery belonging to Bermondsey Abbey. It is maintained as a public garden by the vestry, the rector reserving certain rights. It is well laid out, and forms a most useful and attractive garden.

229. *St. James's Churchyard,* Bermondsey, Jamaica Road.—1¾ acres. It was extensively used for a drying-ground for clean clothes when the Metropolitan Public Gardens Association secured it in 1886, and laid it out as a garden. It is maintained by the vestry.

230. *Roman Catholic Ground,* Parker's Row.—The land was given for the purpose in 1833 or 1834. The ground between the church and the road measures about 300 square yards, and was very much overcrowded. It is closed and untidy, with no tombstones. On August 1st, 1853, a notice

was issued ordering the cessation of burials in the chapel and garden, while the churchyard was closed in 1855, so that it is evident that burials also took place in the garden, *i.e.*, the ground north of the church, between the schools. This is used as a recreation ground for the schools, and is neatly kept.

231. *Southwark Chapel Graveyard* (*Wesleyan*), Long Lane.—900 square yards. This is on the west side of the chapel, which dates from 1808. It is closed, and contains a few gravestones and a hencoop.

232. *Guy's Hospital Burial Ground*, Nelson Street.—This is nearly 200 years old, and is rather over ½ acre. Since being closed for burials it has been let as a builder's yard. The Bermondsey Vestry is now negotiating for its purchase as a recreation ground.

233. *Friends' Burial Ground*, Long Lane.—¼ acre. This was bought in 1697 for 120*l.* It was closed in 1844, but in 1860 a large number of coffins, &c., were brought there and interred when Southwark Street was made and the Worcester Street burial ground annihilated. It is about to be laid out for the public by the Metropolitan Public Gardens Association, and will be maintained by the Bermondsey Vestry, who have it on lease from the Society of Friends. There are no gravestones in it, the Friends not having used any until about 50 years ago, when they began to have small flat ones; now they use erect ones, about a quarter the size of ordinary headstones in cemeteries.

234. *Ebenezer Burial Ground*, Long Lane.—This adjoins the above ground, and it is hoped that it may eventually be added to the garden. It was formed about 100 years ago. It originally belonged to the Independent Chapel in Back Street, Horselydown, and subsequently to the trustees of Ebenezer Baptist Chapel. There is a "minister's vault" in the centre. It is closed and very untidy, being little better than a rubbish heap, and overgrown with weeds. It is about 220 square yards in extent.

ROTHERHITHE.

235. *St. Mary's Churchyard.*—¾ acre. This is closed, except on Sundays. It is full of tombstones and kept in good order.

236. *Additional Ground in Church Street*.—1¼ acres. This is also only open on Sundays, and is fairly tidy. It would make a good garden.

237. *Christ Church Churchyard*, Union Road.—700 square yards. This is closed, and there are no tombstones on the north side of the church. The south side is rather untidy, except round the grave of General Sir William Gomm, who gave the ground for the church (being Lord of the Manor), where there is a patch of good grass and flowers.

238. *All Saints Churchyard*, Deptford Lower Road.—Nearly 1 acre. This land was given by Sir William Gomm in 1840, and was used for 17 years. It is closed, and wooden palings separate it from the ground in front of the church. It is not well kept.

239. *Holy Trinity Churchyard*, near Commercial Docks Pier.—About 1 acre. Consecrated in 1838. This ground was also only used for 20 years; a part of it is railed off for the vicarage garden, where probably no interments took place. It was laid out by the Metropolitan Public Gardens Association in 1885, but not taken over by the London County Council. It is a very attractive, shady garden, with good trees in it, and is now open to parishioners by ticket. Negotiations are on foot for re-opening it to the public.

GREENWICH.

240. *St. Alphage Churchyard*.—Enlarged in 1716, 1774, and 1808. Size 2,740 square yards. This was laid out by the Metropolitan Public Gardens Association in 1889, and is maintained by the Greenwich District Board of Works. There are no seats in it.

241. *Additional Ground*, separated from the above by a public footpath.—This is 2½ acres, and was consecrated in 1833. It was laid out in 1889 by the Metropolitan Public Gardens Association, and is maintained by the Greenwich District Board of Works. There are plenty of seats in it, and it is well used and neatly kept.

242. *St. Nicholas's Churchyard*, Deptford.—¾ acre. This is closed and full of tombstones, but fairly tidy.

243. *Additional Ground*, Wellington Street.—¾ acre. This

ground, belonging to the parish of St. Nicholas, was laid out in 1884 by the Kyrle Society, and is very well kept up by the Greenwich District Board of Works, who have lately acquired a piece of adjoining land and added it to the recreation ground.

244. *St. Paul's Churchyard*, Deptford.—2½ acres. This is vested in the rector, and maintained by the Deptford Burial Board. The gravestones are not moved, but there are a few seats in the ground, which is open to the public.

245. *Baptist* (*Unitarian*) *Chapel Burial Ground*, Church Street.—This touches the above, and is about ¼ acre. It is closed, and has apparently only been used at the western end. It is in a most disgraceful condition, the railings and gravestones are broken, and there is a quantity of rubbish, including the top of a lamp-post, lying about. It would be well if this neglected little ground could be laid out and added to St. Paul's Churchyard.

246. *Friends' Burial Ground*, High Street, Deptford.—About 360 square yards. This is behind the meeting-house and closed. It is neatly kept and only contains one gravestone.

247. *Congregational Chapel Burial Ground*, High Street, Deptford.—About 400 square yards. This is closed, but neatly laid out, and there are a few gravestones against the walls.

248. *Congregational Chapel Ground*, Greenwich Road.—¼ acre, or rather less. This dates from 1800. The gate is often open, and the gravestones are flat or against the walls; but it is a bare, uninteresting-looking ground, which might be made far more attractive with trees and flower-beds.

249. *Congregational Chapel Ground*, Maze Hill, Greenwich.—A rather neglected-looking ground in Park Place, with several flat tombstones, about 500 square yards in size.

250. *Greenwich Hospital Burial Ground.*—This adjoins the Royal Naval Schools. It was given by Prince George of Denmark in 1707, and measures about 4 acres. An inner enclosure is full of tombstones, but the outer part has only some monuments in it. It is very well kept, with splendid trees and good grass, and the gate from the school playground is generally open.

251. *Greenwich Hospital Cemetery.*—In Westcombe. This is nearly 6 acres in size, and was first used in 1857.

LEWISHAM.

252. *St. Mary's Churchyard.*—2 acres. Laid out as a public garden in 1886, and maintained by the Lewisham District Board of Works.

253. *St. Bartholomew's Churchyard*, Sydenham.—¾ acre. Closed for interments. This is beautifully kept, and is a very pretty ground. The gates are generally open, but there are no seats.

254. *Deptford Cemetery.*—17 acres. First used in 1858. By 1889, 50,000 bodies had been interred there.

255. *Lewisham Cemetery.*—About 15 acres.

256. *Lee Cemetery.*—About 8 acres. In Hither Green. These are open daily.

PLUMSTEAD.

257. *St. Nicholas's Churchyard.*—Still in use for burials, but under regulation. It is open daily, and measures about 4 acres.

258. *St. John the Baptist Churchyard*, Eltham.—3 acres. This is also in use, but under regulation, and is open daily.

259. *St. Margaret's Churchyard*, Lee.—Still in use, open daily, and very neatly kept. It is about 1½ acres in size.

260. *The Old Churchyard*, Lee. — This is opposite St. Margaret's, and contains the ruins of the old church. It is full of tombstones and neatly kept. It is generally open, but has no seats in it.

261. *St. Luke's Churchyard*, Charlton.—½ acre. This is full of tombstones and closed, but very neatly kept. Burials occasionally take place in existing vaults, but in each case permission has to be obtained from the Home Secretary.

262. *St. Thomas's Churchyard*, Charlton.—On the borders of Woolwich. Nearly an acre. This churchyard was in use for burials in 1854 when it was put under regulation.

263. *Charlton Cemetery.*—8 acres. First used in 1855. Open daily.

264. *Greenwich Cemetery.*—15 acres. Open daily.

265. *Woolwich Cemetery*, Wickham Lane. (Partly outside the boundary of Plumstead.)—32 acres. First used in 1856. Open daily.

266. *Plumstead Cemetery*, Wickham Lane. — 32½ acres. Formed in 1889. Open daily.

Woolwich.

267. *St. Mary's Churchyard.*—Over 3 acres. In a fine situation overlooking the river. Laid out as a public garden by the Metropolitan Public Gardens Association, at the cost of Mr. Passmore Edwards, and opened in May, 1895. It is maintained by the Woolwich Local Board.

268. *Enon Chapel Yard*, High Street.—112 square yards. A tar-paved and closed yard, with some tombstones against the walls.

269. *Union Chapel Graveyard*, Sun Street.—⅓ acre. This is closed and used as a private garden for one cottage. There is a very bad fence round it, and it looks uncared for. Negotiations are on foot to secure it for the public.

270. *Salem Chapel Yard*, Powis Street.—300 square yards. Eighteen or twenty years ago the London School Board took the chapel and adapted it as a school. It is now the infant school, other buildings having been added, and the graveyard is a tar-paved passage used as a playground.

271. *Wesleyan Chapel Yard*, William Street.—¼ acre. Here a school building has evidently encroached upon the burial ground. There are several gravestones, and it is fairly tidy, the gate being often open.

272. *Roman Catholic Ground*, New Road.—This also has probably been encroached upon. What now exists is a yard, ¼ acre in size, between the school and the Roman Catholic church, with three graves in one enclosure in the middle. The gate is open during school hours.

The City.

I. Burial grounds which are laid out as public recreation grounds :

273. *St. Paul's Cathedral Churchyard.*—Used as a burial place since Roman times. It includes the Pardon Churchyard,

the burial grounds for the parishes of St. Faith and St. Gregory, and a piece allotted to St. Martin, Ludgate. Size, 1½ acres.

274. *St. Botolph's Churchyard*, Aldersgate Street.

275. *Additional Ground for Christ Church*, Newgate Street.

276. *Additional Ground for St. Leonard*, Foster Lane.—These three form together one public garden, rather more than ½ acre in extent.

277. *St. Olave's Churchyard*, Silver Street.

278. *Alihallows Churchyard*, London Wall.

279. *St. Katharine Coleman Churchyard*, Fenchurch Street. —Three small grounds laid out by the Metropolitan Public Gardens Association.

280. *St. Botolph's Churchyard*, Aldgate.—¼ acre. Laid out by the Metropolitan Public Gardens Association.

281. *St. Botolph's Churchyard*, Bishopsgate.—Size nearly ½ acre.

282. *St. Botolph*, Billingsgate, upper burial ground, Botolph Lane.

283. *St. Mary, Aldermanbury Churchyard.*

284. *St. Sepulchre's Churchyard*, Holborn.

285. *St. Bride's Churchyard*, Fleet Street. — Five small grounds laid out with the assistance of the Metropolitan Public Gardens Association.

286. *Additional Ground for St. Dunstans-in-the-West*, in Fetter Lane. Asphalted and used as a playground for the Greystoke Place Board School. Some tombstones remain in an enclosure at the edge.

II. Burial grounds that are not laid out as open spaces for the public use, although most of them are neatly kept, while a few are used as store-yards, and others are open at times:

287. *The Temple Churchyard.*—Partly public.

288. *St. Mary's Roman Catholic Church Ground*, Finsbury Circus.—Very little left.

The churchyards of—

289. *St. Andrew*, Holborn.

290. *Christ Church*, Newgate Street.

291. *St. Ann*, Blackfriars.—Two grounds.

292. *St. Andrew-by-the-Wardrobe*, Queen Victoria Street.

293. *St. Bartholomew-the-Great.*—On the site of the ancient nave, and the *Green Ground* on the site of the north transept.

294. *St. Dionys Backchurch*, Lime Street.
295. *St. Bartholomew-the-Less.*—In the hospital.
296. *St. Giles*, Cripplegate.
297. *St. Alphage*, London Wall.
298. *St. Ann and St. Agnes*, Gresham Street.
299. *St. John Zachary*, Gresham Street.
300. *St. Mary Staining*, Oat Lane.
301. *St. Alban*, Wood Street.
302. *St. Peter Cheap*, Wood Street.
303. *St. Vedast*, Foster Lane.
304. *St. Mildred*, Bread Street.—Yard full of ladders.
305. *St. Mary Somerset*, Thames Street.—Store-yard for old iron, &c.
306. *St. Peter*, Paul's Wharf.
307. *St. Martin Vintry*, Queen Street.
308. *St. Thomas-the-Apostle*, Queen Street.
309. *St. Mary Aldermary*, Watling Street.
310. *St. Antholin*, Watling Street.
311. *St. Pancras*, Pancras Lane.
312. *St. Benet Sherehog*, Pancras Lane.
313. *St. Martin Pomeroy* (St. Olave, Jewry), Ironmonger Lane.
314. *St. Stephen*, Coleman Street.
315. *St. Mildred*, Poultry.
316. *St. Matthew*, Friday Street.
317. *St. John*, Watling Street.
318. *St. Michael*, Queenhithe.—Private garden.
319. *St. Martin*, Ludgate.—Stationers' Hall Court.
320. *St. Christopher-le-Stocks.* — Garden of the Bank of England.
321. *St. Michael*, Cornhill.
322. *St. Peter*, Cornhill.
323. *St. Stephen*, Walbrook.
324. *St. Margaret*, Lothbury.
325. *St. Martin Outwich*, Camomile Street.
326. *St. Michael Paternoster Royal*, College Hill.
327. *St. James*, Garlickhithe.
328. *St. Nicholas Cole Abbey*, Queen Victoria Street.
329. *St. Swithin*, Cannon Street.
330. *Allhallows the Great*, Upper Thames Street.

331. *Allhallows the Less*, Upper Thames Street.
332. *St. Lawrence Pountney*, Cannon Street.—Two grounds.
333. *St. Martin Orgar*, Cannon Street.
334. *St. George*, Botolph Lane.
335. *St. Mary-at-Hill*, Eastcheap.
336. *St. Andrew Undershaft*, Leadenhall Street.
337. *St. Catherine Cree*, Leadenhall Street.
338. *St. Helen*, Bishopsgate.
339. *St. Ethelburgha*, Bishopsgate.
340. *St. Clement*, Eastcheap.
341. *St. Leonard*, Fish Street Hill.
342. *St. Magnus-the-Martyr*, London Bridge.
343. *St. Mary Woolnoth*, Lombard Street.
344. *St. Nicholas Acons*, Lombard Street.
345. *St. Edmund King and Martyr*, Lombard Street.
346. *Allhallows*, Lombard Street.
347. *St. Gabriel*, Fenchurch Street.
348. *Allhallows Staining*, Mark Lane.
349. *St. Olave's*, Hart Street.
350. *Allhallows Barking*, Tower Hill.
351. *St. Dunstans-in-the-East*, Lower Thames Street.
352. *The Burial Ground of Christ's Hospital.*—This has been almost covered with buildings, but a small piece remains as a yard near the great hall.
353. *The Burial Ground of the Greyfriars.*—This is the courtyard, surrounded by the cloisters, in Christ's Hospital, used as a playground by the boys.
354. *St. James's Churchyard*, Duke Street.—This is used as a playground for the Aldgate Ward Schools.
355. *Additional Ground for St. Bride's*, Fleet Street.—This is off Farringdon Street, is about 750 square yards in extent, and is gravelled and used as a volunteer drill-ground. There are no tombstones, and the ground is untidy.
356. *Bridewell Burial Ground.*—This is about 900 square yards in size, and is at the corner of Tudor and Dorset Streets. It was the burial ground of the hospital, which has been removed. It is now a very untidy yard, boarded up with a rough advertisement hoarding, in the occupation of H. S. Foster, builder, 7, Tudor Street. It would make a good public playground.

III. Burial grounds which have been paved and added to the public footway, but are still traceable. The Churchyards of—

357. *St. Mary*, Abchurch Lane.

358. *St. Margaret Pattens*, Rood Lane.

359. *St. Lawrence Jewry*, by the Guildhall.

360. *St. Michael Bassishaw*, Basinghall Street.

361. *St. Benet Fink*, Threadneedle Street.—Railed in.

IV. Burial ground still in use—

362. *Newgate Burial Ground.*—A passage in the prison, used for the interment of those who are executed; 10 feet wide and 85 feet long.

The remainder of the City churchyards have been built upon, or have been annihilated by railways, streets, and roads.

11*th June*, 1895.

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THE END.

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The Burial Act, 1900.

WITH NOTES

AND A

DIGEST OF CASES

AFFECTING BURIALS DECIDED SINCE 1898.

WITH

References to "Baker on Burials," and Forming a Supplement to the Sixth Edition of that Work.

BY

E. LEWIS THOMAS, M.A., LL.M.,

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PREFACE TO THE SUPPLEMENT.

THE Burial Act 1900 was passed in consequence of the report of a Select Committee of the House of Commons appointed in March, 1898.

As pointed out by the Committee in their report, the question of fees preserved by the Burial Act 1852 was a grievance not only to Nonconformists but also to members of the Church of England. Nonconformists objected to the financial burden imposed by consecration of burial grounds under the Burial Acts, and the provision in such portions of consecrated chapels for service according to the rites of the Church of England, they having to contribute to such expenses while not desiring either the consecration of the ground or the provision of the chapels. They further objected to the necessity of giving forty-eight hours' notice before a Nonconformist burial by a Nonconformist minister could take place in the consecrated part of a burial ground (under the Burial Acts) and to the payment of fees to the incumbent, although the latter was not

present. On the other hand, members of the Church of England as ratepayers were entitled to have consecrated some portion of the burial ground or cemetery provided under the Public Health (Interments) Act 1879, consecration being for most Churchmen an indispensable condition of using the burial ground which they had helped to purchase. The local authority, however, in many cases refused to have any portion of their cemetery consecrated when provided under the said Act, being under no legal obligation to do so.

The Act has introduced so many changes in the law of burial, not only with regard to fees, but other matters, that it has been necessary, in order to maintain the usefulness of the Sixth Edition of "Baker on Burials," to prepare this Supplement.

The Burial Act 1900 is given *in extenso*, with notes on the various sections.

In all cases reference is given in the notes to the provisions of the earlier Acts repealed or affected by the new Act.

A digest of all cases affecting the law of burial decided since the publication of the last edition in 1898 has been added, giving reference to the pages in the book where the matter affected by the decisions will be found, &c.

E. LEWIS THOMAS.

4, ELM COURT, TEMPLE,
Jan. 1901.

THE BURIAL ACT, 1900.

63 & 64 Vict. c. 15.

An Act to amend the Law relating to Burial Grounds. [10th July, 1900.]

ARRANGEMENT OF SECTIONS.

1. Consecration.
2. Chapels.
3. Fees.
4. Transfer of powers to Local Government Board.
5. Inquiries by Secretary of State.
6. Protection of unconsecrated burial ground.
7. Obligation of incumbent as to burial.
8. Notice of intention to bury.
9. Application of certain provisions of Burial Acts to cemeteries under 42 & 43 Vict. c. 31.
10. Boundary fences.
11. Meaning of burial authority.
12. Repeal.
13. Short title and commencement.

SCHEDULES.

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

Consecration.

1.—(1.) The burial authority for any burial

63 & 64 Vict. c. 15.

ground may, if they think fit, apply to the bishop to consecrate any portion of the burial ground approved in that behalf by the Secretary of State.

(2.) If the burial authority do not make the application within a reasonable time after a request in that behalf, and the Secretary of State is satisfied that a reasonable number of the persons for whom, or within the area for which, the burial ground is provided desire that a portion of it be consecrated, and that the consecration fees have been paid or reasonably secured, the Secretary of State may make the application in respect of an approved portion of the burial ground, and the bishop may consecrate accordingly, and it shall be the duty of the burial authority to make such arrangements as may be necessary for the consecration.

Burial authority is defined, *infra*, by s. 11; as to Burial Boards see Baker, pp. 54 to 64, and 83 to 85; 15 & 16 Vict. c. 85, ss. 10 & 11, *Ibid*, pp. 101 to 107; and 16 & 17 Vict. c. 134, s. 7, *Ibid*, pp. 153 to 155; and 18 & 19 Vict. c. 128, s. 3, *Ibid*, p. 169.

As to adoption by parish meetings of the Burials Acts, see 56 & 57 Vict. c. 73, s. 7, Baker, pp. 325 to 331.

As to local authorities (outside the County of London) maintaining cemeteries under 42 & 43 Vict. c. 31, see Baker, pp. 18 and 263 to 265.

For the provisions formerly dealing with Consecration, see 15 & 16 Vict. c. 85, s. 30, Baker, p. 120; 16 & 17 Vict. c. 134, s. 7, *Ibid*, p. 153; and 18 & 19 Vict. c. 128, s. 14, *Ibid*, p. 181; and as to appeal from the bishop's refusal to consecrate, see 20 & 21 Vict. c. 81, s. 12, *Ibid*, p. 212. The provisions of

those sections, in so far as they relate to consecration, are repealed by s. 12, and the Second Schedule to the present Act and the enactment of Section 1 of the Act replaces them. 63 & 64 Vict. c. 15.

As to the consecration of ground added to an existing churchyard and to burial grounds attached to "union" houses, see 30 & 31 Vict. c. 133, and 31 & 32 Vict. c. 47, Baker, pp. 392 to 399.

As to the power to hold inquiries by the Home Secretary as to the consecration of any part of a burial ground, see s. 5 of the Burial Act, 1900, *infra*, p. 16.

Chapels.

2.—(1.) A burial authority may at their own cost erect on any part of their burial ground, which is not consecrated or set apart for the exclusive use of any particular denomination, any chapel which they consider necessary for the due performance of funeral services, but any chapel so erected after the passing of this Act shall not be consecrated or reserved for the exclusive use of any denomination.

(2.) A burial authority may, at the request and cost of the residents within their district belonging to any particular denomination, erect, furnish, and maintain a chapel for funeral services according to the rites of that denomination on the ground appropriated to their use.

(3.) Where such a request is made, and the estimated costs are tendered to the burial authority or reasonably secured, then, if the burial authority refuse to grant the request or fail to give effect to it within a reasonable time, a Secretary of State may, if he thinks fit, by order in writing, require the burial authority to erect,

63 & 64 Vict. c. 15. furnish, and maintain, or to give facilities for erecting, furnishing, and maintaining, such a chapel in accordance with directions given in the order, and the burial authority shall comply with the order.

(4.) Subject to the provisions of this section, the obligation of a burial authority to build a chapel within the consecrated part of a burial 42 & 43 Vict. c. 31. ground provided under the Public Health (Interments) Act, 1879, shall cease.

As to the enactments formerly relating to the provision of chapels, see Baker, pp. 78 to 83.

Burial authorities formerly had to erect a chapel for service in the consecrated portion of a burial ground, see 15 & 16 Vict. c. 85, s. 30, Baker, p. 120; this section is repealed by the Burial Act, 1900, s. 12, so far as it relates to consecration and the provision of chapels. Under s. 30, as extended by 16 & 17 Vict. c. 134, s. 7 (*Ibid*, p. 153), it was incumbent upon the burial authority to provide a chapel on the unconsecrated part of the burial ground; to meet this difficulty, 18 & 19 Vict. c. 128, ss. 10 and 14 (*Ibid*, pp. 175 and 181), permitted land to be conveyed and settled as an old burial ground without the provision of any unconsecrated part, and the latter section gave the Secretary of State power to excuse, under certain conditions, the provision of a chapel on the unconsecrated part of a burial ground where it was provided. Both these sections are now repealed by the Burial Act, 1900, s. 12; and s. 7 of 16 & 17 Vict. c. 134 is also repealed so far as it relates to providing a burial ground in consecrated and unconsecrated portions and as to providing chapels.

Under the Public Health (Interments) Act, 1879, Baker, pp. 263 to 265, which incorporated the Cemeteries Clauses Act, 1847, *Ibid*, pp. 265 to 290, there was no obligation to have consecrated the burial ground provided under the former Act; but if there was a portion consecrated, by s. 25 of the

latter Act, it was necessary to provide a consecrated chapel; this obligation is now removed. 63 & 64 Vict. c. 15.

As to the power of the Home Secretary to direct inquiries to be held as to the building of a chapel in any part of a burial ground, see s. 5 of the Burial Act, 1900, *infra*, p. 16.

Fees.

3.—(1.) Every burial authority shall submit to the Secretary of State a table of fees to be received by them in respect of services rendered by any minister of religion or sexton, and the Secretary of State may approve the table with or without modifications. Provided that such fees shall be of the same amount in respect of burial service in the consecrated and the unconsecrated parts of a burial ground.

(2.) If the burial authority fail to submit such a table on being requested to do so by the Secretary of State, he may make a table of fees.

(3.) The fees fixed by the table shall be payable to and collected by the burial authority, together with the other fees payable to them, and shall be paid by the burial authority to the minister or sexton in such manner as may be agreed on, or as in default of agreement may be directed by the Secretary of State.

(4.) Subject to the provisions of this section, no fee shall be payable to any incumbent of a parish in respect of any right of exclusive burial, or the erection of a monument, or any other matter whatsoever, in any burial ground maintained by a burial authority, except for services rendered by him, and this enactment shall apply

63 & 64 Vict. c. 15. to any such fee which is by law or custom payable to the churchwardens of any parish, or to trustees or other persons for any parochial purpose, or for the discharge of any debt or liability, in like manner as it applies to fees payable to an incumbent.

Provided as follows :—

(i.) Where, at the passing of this Act, fees other than for services rendered are payable in respect of any matter arising in any burial ground attached to or used for the purposes of a parish, and laid out and used before the passing of this Act, the like fees shall continue to be paid during the incumbency of the person who, at the passing of this Act, is the incumbent of the parish, or during a period of fifteen years from the passing of this Act, whichever is longer, or if the fees are not paid to the incumbent, or to any person claiming through or under him, then during the said period of fifteen years, and shall be applicable to the like purposes as heretofore, and the burial authority shall collect and pay these fees in like manner as the fees to be paid for services rendered;

(ii.) The Ecclesiastical Commissioners may at the request, and subject to the approval of the incumbent, or other person

interested, agree with any burial authority for such payment, periodical or otherwise, as may be thought equitable in commutation of the fees other than those claimed for services rendered, and an agreement so approved shall be binding on the persons for the time being interested, and the burial authority may make accordingly any payment so agreed upon. Where the fees are paid to an incumbent, or to any person claiming through or under him, the Ecclesiastical Commissioners shall apply the commutation money in the first instance to such compensation of the existing incumbent as they may deem equitable, regard being had to all the circumstances of the case; and the residue, if any, for the augmentation of the benefice. 63 & 64 Vict. c. 15

(5.) No fee, other than fees payable to a sexton for services rendered by him, shall be paid to any clerk or other ecclesiastical officer in respect of interments in a burial ground maintained by a burial authority. Provided that any clerk or other ecclesiastical officer who at the passing of this Act is entitled to fees in respect of interments in any such burial ground, may apply to the burial authority for compensation for the pecuniary loss caused to him by the foregoing enactment, and the burial authority shall receive and consider the application, and pay to him such sum of money

63 & 64 Vict. c. 15.

as equitable compensation for his loss and in such manner as may be agreed on, or in default of agreement may be directed by the Secretary of State.

(6.) For the purposes of this section, a burial authority may borrow in like manner and subject to the like conditions as they may borrow for the provision of a burial ground.

(7.) The provisions of this section, except those as to collection, shall apply to any fixed annual sum substituted for fees in pursuance of section thirty-seven of the Burials Act, 1852, in like manner as they apply to fees.

The scheme of this section is, that after the coming into operation of the Act, all fees shall be abolished in respect of burial (in burial grounds maintained by burial authorities as defined by this Act) except fees for services actually rendered.

The right to fees other than for such services, *i.e.*, to fees which were preserved to the incumbent, &c., in consequence of compulsorily closing churchyards and substituting for them burial grounds under burial authorities, or in other words the ecclesiastical right to fees preserved by the Burial Act, 1855, is still preserved for 15 years or for the life of the person at present entitled to the fees, whichever is the longer.

By s. 33 of the Burial Act, 1852 (Baker, p. 125), a burial board, on selling an exclusive right of burial or a right of constructing a vault or place of burial with the exclusive right of burial, or a right of erecting and placing any monument, gravestone, tablet, or inscription in the consecrated part of a burial ground, had to provide out of such fee a sum or fee for the incumbent or minister of the parish in lieu of the fees he would have been entitled to on the grant of the like rights in the old burial ground of his parish. These fees had to be fixed by the vestry with the sanction of the bishop of the diocese. If no such fees had been fixed, the incumbent was entitled to the

sum he would have been entitled to by law or custom on the grant of the like rights in the old burial ground of the parish. 63 & 64 Vict. c. 15.

The effect of sub-s. 4 of s. 3 of the Burial Act, 1900, is to repeal the above provision in effect, and the latter portion of s. 33 is expressly repealed by s. 12 of the 1900 Act. The words in s. 3 (4) "right of exclusive burial" have given rise to some question as to their meaning. They apparently are not intended to mean the right of the incumbent or minister of the parish to read the burial service at a funeral, but merely what is referred to in s. 33 of the Burial Act, 1852, as the "exclusive right of burial."

Some doubt has arisen whether the fee, which the incumbent has hitherto been entitled to in respect of a burial in the consecrated part of a burial ground when the religious service over the body buried is performed by some one other than the incumbent or his deputy, is preserved to the incumbent. It seems clear that the fee is preserved either, as explained by Lord Coleridge, L.C.J. (in the case of *Wood* v. *Headingly Burial Board* [1892], 1 Q. B., at p. 728), for services rendered or preserved for fifteen years under the proviso of s. 3 (4) (i.) as a fee other than for services rendered.

Under s. 34 of the Burial Act, 1852 (set out Baker, p. 127), Burial Boards have power to fix and alter the fees and payments in respect of interments, and the sums payable for the exclusive right of burial, and for the right of erecting any monument, gravestone, or tablet. But under s. 7 of the Burial Act, 1855, the fixing or altering of such fees is subject to the sanction of the Home Secretary, see *Ibid*, p. 173.

Under s. 32 of the Burial Act, 1852 (Baker, pp. 122 to 125), every incumbent or minister of a parish for which a burial ground is provided, and every sexton was entitled to receive the same fees in respect of burials in such burial ground or the consecrated part thereof, which he had previously received. These words are now repealed by s. 12 of the Burial Act, 1900.

By sub-s. 3 the Burial Authority has to collect the fee for the minister or incumbent, but under s. 32 of the Burial Act, 1852, it had no such obligation: see *Cronshaw* v. *Wigan Burial Board*, and *Stewart* v. *West Derby Burial Board*, cited in the note to that section, *Ibid*, at p. 125.

63 & 64 Vict. c. 15.

As to the powers of borrowing, see the Burial Act, 1852, ss. 20 and 21, and the notes thereon, Baker, pp. 111 to 113. Under s. 37 of the Burial Act, 1852, *Ibid*, p. 129, which is now repealed, power was given to substitute a fixed annual sum for the fees preserved to the incumbent, clerk, and sexton by s. 33 of the said Act.

Transfer of powers to Local Government Board.

4. The powers and duties of the Secretary of State under or referred to in the enactments in the First Schedule to this Act shall be transferred to the Local Government Board, and those enactments shall have effect as if any reference therein to a Secretary of State were a reference to the Local Government Board.

The powers and duties of the Home Secretary transferred to the Local Government Board are as follows:—

(*a*) Under the Burial Act, 1852, s. 2, the duty of representing to Her Majesty in Council the necessity of closing, for the protection of the public health, burial grounds in the metropolis: see Baker, p. 93. Under s. 6, the power to grant licences for burial in the metropolis in closed burial grounds, and in or under a church or chapel closed for burial, see *Ibid*, p. 97. Under ss. 7 and 9, the giving approval of new burial grounds or cemeteries within the metropolis or two miles thereof: see *Ibid*, p. 99. Under s. 10 the reception of resolutions as to the provision of new burial grounds, see *Ibid*, p. 101.

(*b*) Under the Burial Act, 1853, s. 1, the duty of representing to Her Majesty in Council the necessity of closing, for the protection of the public health, existing burial grounds, or prohibiting the opening of new burial grounds outside the metropolis: see Baker, p. 149. Under s. 4 the power to grant licences for burial outside the metropolis in closed burial grounds and in or under a church or chapel closed for burial, see *Ibid*, p. 152. Under ss. 5 and 6, the giving approval of new burial grounds or cemeteries in any city or town or limits

within which burial has been prohibited, see Baker, p. 153.

(*c*) Under the Burial Act, 1855, s. 3, the reception of resolutions to provide new burial grounds, see Baker, p. 169. Under s. 6, the power to grant a warrant authorising a burial board to expend money necessary to provide a burial ground, see *Ibid*, p. 171. Under s. 7, the approving the amount of fees, &c., to be received by a burial board for interments, exclusive right of burial, &c., as provided by s. 34 of the Burial Act, 1852, see *Ibid*, pp. 127 and 173. Under s. 8, the power to direct inspection of burial grounds and to appoint inspectors, see *Ibid*, p. 173. Under s. 17 to give sanction to a burial board to let land not required for burials, see *Ibid*, p. 185.

(*d*) Under the Burial Act, 1857, s. 9, the power to grant approval for the appointment of a burial board for united parishes, &c., and to exempt such parishes in certain cases: see Baker, p. 209. Under s. 10 the duty of representing to Her Majesty in Council the necessity of making regulations in respect of burials in burial grounds and cemeteries, see *Ibid*, p. 211. Under s. 23 the duty of representing to Her Majesty in Council the necessity of making regulations for churchwardens and others having the care of vaults or places of burial, see *Ibid*, p. 220. Under s. 24 the power to sanction unconsecrated land or buildings vested in trustees for the purposes of burial, being let or leased or sold when burial is ordered to be discontinued therein, see Baker, p. 221.

(*e*) Under the Burial Act, 1859, s. 1, the power to direct the churchwardens to carry out the orders in Council where disobeyed by the persons having the care of any vaults or place of burial affected by such orders, see Baker, p. 227.

(*f*) Under the Burial Act, 1860, s. 4, the power to grant approval of a burial board for an entire parish where it has been divided for ecclesiastical purposes, see Baker, p. 233.

63 & 64 Vict. c. 15.

(*g*) Under the Burial Act, 1871, s. 1, the power to grant approval for the appointment of a burial board, see Baker, p. 236.

Inquiries by Secretary of State.

5.—(1.) The Secretary of State may, if he thinks fit, appoint any person to inquire into any matter relating to the consecration of any part of a burial ground, or the building of any chapel therein, or the fixing, varying, or commutation of or compensation for any fees payable to ministers of religion, ecclesiastical officers, and sextons in connection therewith.

(2.) The Secretary of State may make such order as he thinks just as to the payment by the burial authority or other parties of the whole or any part of the costs of the inquiry, including the remuneration and expenses hereinafter mentioned. Any such order may direct payment to be made to the Exchequer or other parties, and may be enforced as if it were an order of the High Court.

(3.) The Secretary of State may assign to any person appointed under this section such remuneration not exceeding five guineas a day as he may think fit, and a suitable allowance for expenses, and the remuneration and allowance so assigned shall, except so far as otherwise provided, be paid out of moneys provided by Parliament.

As to consecration, see s. 1 and the notes thereon, *ante*, pp. 5 & 6.

As to the building of chapels, see s. 2 and the notes thereon, *ante*, p. 8.

63 & 64 Vict. c. 15.

Protection of unconsecrated burial ground.

6. Unconsecrated ground which is maintained by a burial authority and set apart for the purposes of burial shall not be applied to any other purpose except by leave of the Local Government Board.

As to unconsecrated ground, see Baker, pp. 6 & 41.

As to the provision of unconsecrated ground by a burial board, see s. 6 of the Burial Act, 1853, *Ibid*, p. 153, as amended by s. 12 and Schedule II. of this Act, *infra*, p. 21.

As to the power to let, lease, or sell unconsecrated land or buildings vested in trustees for the purpose of a cemetery or burial ground, and burials therein have been ordered to be discontinued, see s. 24 of the Burial Act, 1857, *Ibid*, p. 221. The sanction of the Secretary of State required by that section is now to be given by the Local Government Board, see s. 4 and Schedule I. of the Burial Act, 1900.

Obligation of incumbent as to burial.

42 & 43 Vict. c. 31.

7. The incumbent of any ecclesiastical parish situate wholly or partly within the area for which a burial ground is provided under the Public Health (Interments) Act, 1879, shall, with respect to his own parishioners, and persons dying in his parish, be under the same obligation to perform funeral services in that burial ground as he is to perform funeral services in a burial ground provided under the Burial Acts, and the power of the burial authority to appoint a chaplain for a burial ground provided under the Public Health (Interments) Act, 1879, shall cease, and where there is no chaplain for a burial ground so provided, burials in the consecrated part of the ground shall be registered in like manner, and

63 & 64 Vict. c. 15. subject to the like provisions as burials in the unconsecrated part.

As to the provision of burial grounds under the Public Health (Interments) Act, 1879, see that Act set out, Baker, pp. 263 to 265. That Act incorporates the Cemeteries Clauses Act, 1847, which is set out, *Ibid*, pp. 265 to290. As to the necessity to provide a consecrated part and unconsecrated part of a cemetery under the latter Act, see the note, *Ibid*, p. 265.

The obligation to appoint a chaplain if a portion of a cemetery provided under the Cemeteries Clauses Act, 1847, is consecrated, was contained in s. 27 of that Act, *Ibid*, p. 275. See as to the chaplain's duties, powers, and remuneration, ss. 28 to 32, *Ibid*, pp. 276 and 277.

There is no power under the Burial Acts for a burial authority to appoint a chaplain, but by s. 39 of the Act of 1852 (*Ibid*, p. 130) arrangements may be made by the incumbents of different parishes for such an appointment.

The burials in the consecrated part of such cemetery had to be registered by the chaplain under s. 32, *Ibid*, p. 277. As to the registration of burials generally, see the Introduction, pp. 86 to 91, and the Registration Acts, *Ibid*, p. 433.

As to the obligation of the incumbent of a parish to perform funeral services in a burial ground provided under the Burial Acts, see the Introduction, *Ibid*, pp. 2 to 5, 23 and 24; and the Burial Act, 1852, s. 32, and the notes thereon, *Ibid*, pp. 122 to 125.

Notice of intention to bury.

8. The notice to be given of intention to bury in a burial ground maintained by a burial authority shall be given at such time and to such person as the burial authority may direct, and so much of section one of the Burial Laws Amendment Act, 1880, as requires forty-eight hours' notice to be given in any such case shall be repealed.

43 & 44 Vict. c. 41.

The Burial Laws Amendment Act, 1880, is set out, Baker, p. 239 *et seq.* It would seem that under s. 1 of that Act the notice will still have to be a 48 hours' notice if the ground in

which the burial is to take place is not maintained by a burial authority. 63 & 64 Vict. c. 15.

9. The provisions of section seven of the Burial Act, 1853, as to allotment of the unconsecrated part of a burial ground, and the Burial Laws Amendment Act, 1880, as amended by this Act, shall apply to burial grounds provided under the Public Health (Interments) Act, 1879, as if the burial authority were a burial board. Application of certain provisions of Burial Acts to cemeteries under 42 & 43 Vict. c. 31.

The provision of s. 7 of the Burial Act, 1853 (set out Baker, p. 153), is as amended by the Burial Act, 1900, that where a Burial Board provide a new burial ground under the Burial Acts, the unconsecrated part shall be allotted in such manner and in such portions as may be sanctioned by the Secretary of State.

The Burial Laws Amendment Act, 1880, is set out, *Ibid*, p. 239 *et seq.* The Public Health (Interments) Act, 1879, is set out, *Ibid*, p. 263.

As to the necessity formerly of reserving or not a consecrated portion of a cemetery provided under that Act, see note, *Ibid*, p. 265.

10. Section fifteen of the Cemeteries Clauses Act, 1847 (relating to boundary fences), shall not apply to a burial ground provided under the Public Health (Interments) Act, 1879. Boundary fences, 10 & 11 Vict. c. 65.

Section 15 of the Cemeteries Clauses Act, 1847 (set out, Baker, p. 272), requires every part of a cemetery provided under that Act to be enclosed by walls or fences of prescribed materials and dimensions, or if no materials or dimensions are prescribed, by walls or iron railings eight feet high.

The Public Health (Interments) Act, 1879, s. 3 (*Ibid*, p. 263), incorporates with that Act the Cemeteries Clauses Act, 1847.

11. In this Act the expression "burial authority" shall mean any burial board, any Meaning of burial authority, 42 & 43 Vict. c. 31.

63 & 64 Vict. c. 15. council, committee, or other local authority having the powers and duties of a burial board, and any local authority maintaining a cemetery under the Public Health (Interments) Act, 1879, or under any local Act.

The Public Health (Interments) Act, 1879, is not one of the Burial Acts, 1852 to 1885, see notes, Baker, pp. 92, 192, and 237.

Repeal

12. The enactments mentioned in the Second Schedule to this Act are hereby repealed to the extent mentioned in the third column of that schedule.

The enactments mentioned in the Schedule are set out *in extenso* in "Baker on Burials."

Short title and commencement.

13.—(1.) This Act may be cited as the Burial Act, 1900, and may be cited and shall be construed with the Burial Acts, 1852 to 1885.

(2.) This Act shall come into operation on the first day of January one thousand nine hundred and one.

See note to s. 11, *ante*.

SCHEDULES.

FIRST SCHEDULE (*a*).

ENACTMENTS GIVING OR REFERRING TO POWERS WHICH ARE TO BE TRANSFERRED TO THE LOCAL GOVERNMENT BOARD. 63 & 64 Vict. c. 15.

Session and Chapter.	Short Title.	Enactments.
15 & 16 Vict. c. 85.	The Burial Act, 1852	Sections two, six, seven, nine, ten, and forty-four.
16 & 17 Vict. c. 134.	The Burial Act, 1853	Sections one, four, five, and six.
18 & 19 Vict. c. 128.	The Burial Act, 1855	Sections three, six, seven, eight, and seventeen.
20 & 21 Vict. c. 81.	The Burial Act, 1857	Sections nine, ten, twenty-three, and twenty-four.
22 Vict. c. 1.	The Burial Act, 1859	Section one.
23 & 24 Vict. c. 64.	The Burial Act, 1860	Section four.
34 & 35 Vict. c. 33.	The Burial Act, 1871	Section one.

(*a*) See notes to s. 4, *ante*, p. 14.

SECOND SCHEDULE (*b*).

ENACTMENTS REPEALED.

Session and Chapter.	Short Title.	Extent of Repeal.
15 & 16 Vict. c. 85. (*c*).	The Burial Act, 1852	Section thirty, from "and to build" to the end of the section. In section thirty-one the words "as aforesaid."

(*b*) See s. 12, *ante*, p. 20.
(*c*) Set out Baker, p. 92.

63 & 64 Vict. c. 15.	Session and Chapter.	Short Title.	Extent of Repeal.
	15 & 16 Vict. c. 85 —*cont.*	The Burial Act, 1852 —*cont.*	In section thirty-two the words "from and after the consecration as aforesaid of"; the words from "except any portion" to "appoint, such burial ground"; the words "and shall be entitled to receive the same fees in respect of such burials which he has previously enjoyed and received"; the words "and shall be entitled to receive the same fees on such burials"; and the words "and received" where they last occur. Section thirty-three, from "but there shall be payable" to the end of the section. In section thirty-four, the words "without prejudice to the fees and payments herein specially provided for." Sections thirty-five, thirty-six, and thirty-seven. Section fifty so far as it relates to a burial ground under a burial authority.
	16 & 17 Vict. c. 134. (*d*).	The Burial Act, 1853	Section seven, so far as it re-enacts any provision repealed by this Act, and the words

(*d*) Set out Baker, p. 153.

Session and Chapter.	Short Title.	Extent of Repeal.
16 & 17 Vict. c. 134 —*cont.*	The Burial Act, 1853 —*cont.*	"that new burial ground shall be divided into consecrated and unconsecrated parts, in such proportions and"; and from "and when any burial board" to the end of the section.
17 & 18 Vict. c. 87. (*e*).	The Burial Act, 1854	Sections eight and ten.
18 & 19 Vict. c. 128. (*f*).	The Burial Act, 1855	Sections ten and fourteen.
20 & 21 Vict. c. 35. (*g*).	The City of London Burial Act, 1857	Sections one, three, four, and five, and the Schedule.
20 & 21 Vict. c. 81. (*h*).	The Burial Act, 1857	Section three, from "and may, if they see fit," to the end of the section. In section five, the words "and consecrated," and the words "and be entitled to the same fees," in each case where they occur. In section twelve, the words "which application the board is required to make as soon as such ground is in such fit and proper condition." Section seventeen.

(*e*) Set out Baker, pp. 163 to 165.
(*f*) Set out *Ibid*, pp. 175 and 181.
(*g*) Set out *Ibid*, pp. 193, 195 and 196.
(*h*) Set out *Ibid*, pp. 200, 204, 212 and 216.

RECENT CASES.

The following cases have been decided since the publication of the Sixth Edition of "Baker's Law of Burials."

See "Baker," pp. 116, 117, 153.

Purchase of addition to burial ground—Approval by Secretary of State—Burial Act, 1852 (15 & 16 *Vict. c.* 85), *ss.* 25, 26—*Burial Act*, 1853 (16 & 17 *Vict. c.* 134), *s.* 6.

The Burial Board of Portsmouth, where by Order in Council no new burial ground was to be opened without the previous approval of one of the Secretaries of State, contracted in 1889, with the consent of the vestry, for the purchase of a piece of land for the purpose of adding to their existing cemetery. The purchase was not to be completed till June, 1896. In the meantime no interest was to run, and the vendor was to be at liberty to remove the clay and make bricks on the land. In 1895 the property and liabilities of the board were transferred to the corporation. Shortly before the time for completion, the corporation applied to the Home Secretary for his approval of the land as a burial ground, which he refused to give. The corporation then declined to complete, and the vendor sued for specific performance or damages:—

Held, by the Court of Appeal, affirming the decision of Byrne J. on this point, that s. 6 of the Act of 1853, which provides that no new burial ground shall be "provided and used" within the limits there specified without the approval of a Secretary of State, applied to an addition to an existing burial ground.

But *held*, reversing the decision of Byrne J., that the section did not prohibit the contracting to purchase land with the

consent of the vestry for the purpose of a burial ground without the approval of a Secretary of State, and that the contract was binding, and the vendor entitled to damages for the breach of it, he not insisting on specific performance: *Ward* v. *Portsmouth Corporation*, C. A. [1898] 2 Ch. 191; 78 L. T. 771; 67 L. J. Ch. 489; 46 W. R. 610; 62 J. P. 820, *per* Lindley M. R.; s. 6 of the Burials Act, 1853, applies to new additions to burial grounds as well as to new burial grounds. *Ib.*

See "Baker," pp. 109, 110.

Mandamus—Refusal to produce Minutes of Burial Board to Ratepayer—Application not bonâ fide—Ulterior Motive.

A ratepayer named Hatton made an application to the District Council of Wimbledon, being the Burial Board, for his solicitors to inspect and take copies of these minutes. Those solicitors were acting for a company, who, for another matter, wished to obtain inspection of those books. The board refused to allow the solicitors to inspect, on the ground that the ratepayer alone was the person to whom they were bound to produce the books, and that the present application was not made *bonâ fide*, but for another purpose, that was indirectly obtaining inspection on behalf of the company for whom the solicitors were also acting:—

Held, that the Court would not in the exercise of their discretion make absolute this rule for a writ of mandamus, as the application was not made *bonâ fide* for the purpose of the ratepayer, but for another purpose: *Reg.* v. *Wimbledon Urban Council; ex parte Hatton*, (1898) Div. Court; 77 L. T. 599; 62 J. P. 84.

See "Baker," pp. 340, 372, 373, 374.

"*Ecclesiastical charity*"—*Local Government Act*, 1894 (56 & 57 *Vict. c.* 73), *ss.* 70, 75.

The founder of an eleemosynary charity prescribed by the instrument of foundation that the objects should be selected from among persons who should have (1) regularly attended divine service at the parish church for a fixed period, (2) been partakers of the Holy Communion, (3) lived a godly,

righteous and sober life to the glory of God's Holy Name, and that the trustees should be members of the Church of England:—

Held, that this was a charity the endowment whereof was held for the benefit of members of the Church of England as such, and was therefore an ecclesiastical charity within s. 75 of the Local Government Act, 1894. *In re Perry's Almshouses*, Stirling J. [1898] 1 Ch. 391.

'The expression "ecclesiastical charity" includes a charity the endowment whereof is held for some one or more of the following purposes:—

* * * *

(*e*) Otherwise for the benefit of any particular church or denomination or of any members thereof as such.' In s. 75 of the Local Government Act, 1894, the above definition shows that no charity is an ecclesiastical charity within that sub-section (*e*), unless upon the true construction of the instrument of endowment its benefits are exclusively confined to members of a particular church or denomination. *In re Ross' Charity. In re Perry's Almshouses*, C. A. [1899] 1 Ch. 21; 68 L. J. Ch. 66; 79 L. T. 366.

Section 14 (2) of the Local Government Act, 1894, applies to the case of a non-ecclesiastical charity, the endowment of which is vested in the churchwardens alone. Ecclesiastical charities under the Act are not confined to charities for the spiritual or religious benefit of a church, but include eleemosynary charities. *Ib.*

See "Baker," pp. 220, 221.

Churchwardens—Criminal suit against—Jurisdiction—Duty of churchwardens to obtain faculty before removing human remains—Burial Act*, 1857 (20 & 21 *Vict. c.* 81), *s.* 23—*Faculty to carry out directions in Order in Council for preventing vaults becoming dangerous to public health.

The churchwardens of a parish church wholly closed for burials, who, purporting to act under the provisions of an Order in Council under the 23rd section of the Burials Act, 1857, directing the removal and re-interment elsewhere of

human remains underneath the church, do or cause to be done the acts therein directed without obtaining a faculty from the Ordinary, are guilty of an offence against the laws ecclesiastical, in respect of which they may be cited to appear to answer articles to be administered to them in a criminal suit.

The 23rd section of the Burial Act, 1857, provides (*inter alia*) that it shall be lawful for Her Majesty, upon the representation of one of Her Majesty's principal Secretaries of State, by and with the advice of Her Privy Council from time to time, to order such acts to be done by or under the direction of the churchwardens or such other persons as may have the care of any vaults or places of burial, for preventing them from becoming or continuing dangerous or injurious to the public health, and such churchwardens or other persons shall do or cause to be done all acts ordered as aforesaid.

Orders in Council issued under the above section and served on the churchwardens of a parish church ordered that the churchwardens or the persons having the care of the vaults under the church should adopt or cause to be adopted the following measures, namely, that the whole of the human remains lying beneath the floor of the church should be removed, and reburied in a specified cemetery or in some other legal burial ground. In consequence of the service of these Orders in Council, the churchwardens, without having obtained any faculty from the Ordinary, pulled down all the pews in the church, took up the flooring and monumental slabs in the same, and removed certain coffins and human remains buried thereunder, for the purpose of re interring them elsewhere. It appeared that burials in the parish had been by law wholly discontinued in the year 1853, and that since that year no burial was recorded to have taken place there:—

Held, that the acts of the churchwardens, not having been authorized by a faculty, were illegal, and the Orders in Council afforded no justification for what had been done by them; such Orders being either wholly *ultra vires* or to be construed as merely directing an application for a faculty to carry out their terms:—

Held, also, that, on the petition of the rector of the parish church and the churchwardens, a faculty might issue authorizing

for sanitary reasons the removal of the remains and their re-interment in consecrated ground. *Lee* v. *Hawtrey*, Consist. Ct. of London [1898], P. 63.

"Baker," pp. 412, 413, 414.

Footpath across churchyard for use of parishioners and public —Proviso for closing footpath on one day in the year.

In a faculty granted for a fenced-in footpath across a closed parish churchyard for the use of the parishioners with right of way for the public, a proviso was inserted for the footpath to be closed on one day in the year in order to show that it remained an integral portion of the churchyard with certain limitations on its use. *St. John the Baptist, Cardiff (Vicar of)* v. *Parishioners of same*, Consist. Ct. of Llandaff [1898], P. 155.

See "Baker," pp. 223, 224.

Jurisdiction of Ordinary over all bodies buried in consecrated ground—Licence of Secretary of State—Exhumation for purposes of Verification—Burial Act, 1857 (20 & 21 *Vict. c.* 81), *s.* 25.

The jurisdiction of the Ordinary over all bodies buried in consecrated ground is not affected by s. 25 of the Burial Act, 1857, which requires the licence of a Secretary of State for the removal of any body from any place of burial unless it be removed from one consecrated place of burial to another by faculty granted by the Ordinary.

The Ordinary may grant a faculty for the exhumation, for the purpose of identification, of a body which has been buried in consecrated ground, and the licence of the Secretary of State is not a condition precedent to the grant, although the faculty may be inoperative until the licence has been obtained.

Semble: A body buried in consecrated ground cannot be removed without the sanction of the Ordinary: *Reg.* v. *Dr. Tristram, Judge of Consist. Ct. of London*, Div. Ct. [1898], 2 Q. B. 371; 79 L. T. 74; 67 L. J. Q. B. 857; 46 W. R. 653.

See "Baker," pp. 223, 275.

Jurisdiction—Acceptance of letters of request granted in aid of probate action—Court of Probate Act, 1857 (20 & 21 *Vict.*

c. 77), *s.* 29—*Judicature Act Amendment Act*, 1875 (38 & 39 *Vict. c.* 77), *s.* 18—*Discretion*—6 & 7 *Will.* 4, *c. cxxxvi.*, *s.* 4—*Burials Act*, 1857 (20 & 21 *Vict. c.* 81), *s.* 25—*Jurisdiction to decree faculty for opening a vault and coffin in consecrated burial ground for the purpose of identification, and to remove remains there buried—Licence of Secretary of State before opening vault not required.*

The Chancellor of the Diocese of London, in the exercise of his judicial discretion, may accept letters of request, signed by the President of the Probate, Divorce, and Admiralty Division, requesting that in aid of the trial of an issue in a probate action a faculty may be granted authorizing the opening of a vault in a consecrated burial ground in the diocese, and the opening and inspection of a coffin there buried, for the purpose of identification, and issue a faculty to give effect to such letters of request :—

Held, that the Court, in the exercise of its discretion, would accept the letters of request, reject the evidence tendered on behalf of the opponents, and decree a faculty to issue according to the tenor of the letters of request :—

Held, also, that s. 25 of the Burials Act, 1857, did not require that a proviso should be inserted in the faculty that the faculty was granted subject to the licence of one of Her Majesty's principal Secretaries of State.

Semble, that the faculty might be lawfully acted upon without any such licence having been obtained : *Druce* v. *Young*, Consist. Ct. of London [1899], P. 84.

See " Baker," pp. 223, 275.

Disinterment—Jurisdiction of Consistory Court.

A Consistory Court has no jurisdiction to order the disinterment of a body, or to issue a citation to a cemetery company to come before the Court and show cause why an order should not be made on the company for the disinterment of a body : *Reg.* v. *Tristram*, [1899] Div. Court ; 80 L. T. 414 ; 47 W. R 639 ; 63 J. P. 391.

See " Baker," pp. 418, 419.

Jurisdiction — Erection on churchyard closed for burials— Schools and parish hall to be used for mission services—Disused Burial Grounds Act, 1884 (47 & 48 *Vict. c.* 72), *s.* 3— *Meaning of " enlargement of church, chapel, meeting-house, or other places of worship."*

The 3rd section of the Disused Burial Grounds Act, 1884, provides that after the passing of that Act it shall not be lawful to erect any buildings upon any disused burial ground (defined by that Act to mean a burial ground in respect of which an Order in Council has been made for the discontinuance of burials therein in pursuance of the Burial Acts, 1852 and 1853), except for the purpose of enlarging a church, chapel, meeting-house, or other places of worship :—

Held, that the Ordinary had, without infringing the above section, jurisdiction to authorize by faculty the rebuilding and extension by way of enlargement of schools and a parish hall erected on a disused burial ground within the Act, and which were used for mission services for adults and children, and which it was intended to use when rebuilt for the same purposes supplemental to the services in the parish church, and to meet the growing wants of the parish: *Vicar of St. James the Less, Bethnal Green* v. *Parishioners of Same*, Consist. Ct. of London [1899], P. 55.

See " Baker," p. 392.

Consecration—Ground " adjoining" to an existing churchyard —Intervening highway—Consecration of Churchyards Act, 1867 (30 & 31 *Vict. c.* 133).

Land may adjoin and may be added to an existing churchyard within the meaning of the Consecration of Churchyards Act, 1867, although it is separated therefrom by a highway.

A plot of ground separated from a churchyard by a highway about twenty feet wide was held to be "adjoining to an existing churchyard" within the meaning of the Act: *In re Baroness Bateman and Parker's Contract*, Kekewich, J. [1899],

1 Ch. 599; 80 L. T. 469; 68 L. J. Ch. 330; 47 W. R. 516; 63 J. P. 345.

See "Baker," pp. 418, 423, 429.

Faculty—Disused burial ground, faculty for erection of churchyard-wall with arcade on—Disused Burial Grounds Act, 1884 (47 & 48 *Vict. c.* 72), *s.* 3—*Open Spaces Act*, 1887 (50 & 51 *Vict. c.* 32), *ss.* 4, 14—*Meaning of "building"—Wishes of parishioners—Evidence—Memorials.*

A faculty for the erection on a disused burial ground of a churchyard wall, one side of which would be so built as to form an arcade or covered way for the protection from the weather of frescoes proposed to be painted on the panels of that side of the wall which would be inside the churchyard, was granted, the Ordinary being of opinion that the wall or structure in question was not a "building" prohibited to be erected on a disused burial ground by the Disused Burial Grounds Act, 1884, and the Open Spaces Act, 1887: *Vicar of St. Botolph, Aldersgate Without* v. *Parishioners of Same*, Consist. Ct. of London [1900], P. 69.

See "Baker," pp. 11, 42, 414.

Faculty for removal of human remains and use of strip of closed churchyard for widening of public highway—Joint petition by incumbent and churchwardens and highway authority—Practical necessity for proposed works — Issue of faculty to incumbent and churchwardens.

Where it appeared that the widening of a public highway abutting on a churchyard of a parish church would be a benefit both to the congregation attending the church and to the public in general, and that in the opinion of the highway authority—a municipal corporation—it was practically necessary that the widening should be effected by including therein a strip of the churchyard closed for burials by Order in Council, a faculty was granted to the incumbent and churchwardens of the church authorizing the removal of human remains interred in the portion of the churchyard required for the widening and the setting back of the churchyard-fence so as to throw such

portion of the churchyard into the highway on the Ordinary being satisfied that an adequate consideration would be paid by the corporation in return for the rights sanctioned.

The corporation had joined in petitioning for the faculty, but was omitted from the grant, the Ordinary being of opinion that it was preferable that the grant should be made to individuals: *Vicar of St. Nicholas, Leicester* v. *Langton*, Consist. Ct. of Peterborough [1899], P. 19.

Faculty—Jurisdiction—Grant of Faculty for use as Public Street of Portion of consecrated Cemetery or Churchyard closed for Burials, and setting back of Cemetery or Churchyard-wall —Retention of Cause.

The Ordinary has jurisdiction to grant a faculty authorizing a portion of a consecrated cemetery or churchyard, closed for burials by Order in Council, to be used for widening a public street. Any faculty granted for this purpose should contain exact particulars of the measurements of the portion of the cemetery or churchyard proposed to be used for the widening.

The rector and churchwardens of a parish church in the diocese of Exeter, and the corporation of a borough in which a consecrated cemetery forming an addition to the parish churchyard was situate, petitioned the Ordinary for a faculty to authorize a strip of the cemetery being used for widening an adjoining public street, and the boundary wall of the cemetery being set back so as to form the boundary wall between the remaining portion of the cemetery and the widened street. It appeared that the street proposed to be widened was only sixteen feet wide, and too narrow for the traffic along it, and that the proposed widening would be not only for the general convenience and safety of the public, but particularly of the rector and his parishioners, to the former of whom and the churchwardens moreover, by way of consideration, a sum of money was intended to be paid by the corporation. It also appeared that the strip of the cemetery proposed to be thrown into the street had been closed for interments under an Order in Council, and that the proposed alteration of the width of the street had been unanimously approved by the parish vestry. The Chancellor of the Diocese of Exeter refused to issue citation, being of opinion that he had no jurisdiction to grant

the faculty prayed for. The petitioners appealed to the Arches Court of Canterbury.

The Dean of Arches allowed the appeal, retained the cause, and, the allegations in the petition having been verified by affidavit, decreed a faculty to issue in accordance with the prayer of the petitioners: *In re Bideford Parish; Ex parte Rector, &c., of Bideford*, Arches Court of Canterbury [1900], P. 314.

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